

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
Approval of the On-Bill Financing	:	10-0091
Program pursuant to Section 16-111.7 of	:	
the Public Utilities Act.	:	

PROPOSED ORDER

April 16, 2010

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By order of the Commission:

On February 2, 2010, Commonwealth Edison Company (“ComEd” or “Company” or “Utility”) filed a Petition, pursuant to Section 16-111.7 of the Public Utilities Act (the “Act”) (220 ILCS 5/16-111.7), requesting that the Illinois Commerce Commission (“Commission”) issue an order on or before June 2, 2010 approving ComEd’s On-Bill Financing Program (“OBF Program” or “Program”). ComEd also requests that the Commission approve the proposed changes to ComEd’s General Terms and Conditions, Rider EDA - Energy Efficiency and Demand Response Adjustment (“Rider EDA”) and Rider UF - Uncollectible Factors (“Rider UF”), which are required to implement the Program.

I. Background

On July 10, 2009, the Governor signed Senate Bill 1918 into law creating Public Act 96-0033 (“SB 1918”). SB 1918 added, among other additions, Sections 16-111.7 (the “Electric OBF Law”) and 19-140 (the “Gas OBF Law”) to the Act, requiring electric and gas utilities, respectively, serving more than 100,000 customers on January 1, 2009, to create programs that “will allow utility customers to purchase cost-effective energy efficiency measures with no required initial upfront payment, and to pay the cost of those products and services over time on their utility bill.” 220 ILCS 5/16-111.7(a); 220 ILCS 5/19-140(a).

In compliance with Subsection (b-5) of the Electric OBF Law and the Gas OBF Law, six workshops were convened between August 4, 2009 and December 4, 2009. During the workshops, participants discussed issues related to the OBF program, as suggested by Subsection (b-5), including “program design, eligible energy efficiency measures, qualifications, financing, sample documents such as request for proposals, contracts, and agreements, dispute resolution, pre-installment and post installment verification, and evaluation.” 220 ILCS 5/16-111.7(b-5); 220 ILCS 19/140(b-5).

The statute requires each utility subject to its provisions to submit a proposed OBF program no later than 60 days after the completion of workshops mandated by Subsection (b-5) of Sections 16-111.7 and 19-140 of the Act. 220 ILCS 5/16-111.7(b-5); 220 ILCS 5/19-140(b-5). The petition for Northern Illinois Gas Company established

Docket 10-0096; the petition of AmerenCILCO/AmerenCIPS/AmerenIP established Docket 10-0095; and the petition of North Shore Gas Company and The Peoples Gas Light and Coke Company established Docket 10-0090.

On February 2, 2010, ComEd filed its Petition, Direct Testimony, Program Design Document ("PDD"), and tariff revisions (collectively, these filings are sometimes herein referred to as the "Proposal").

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, a status hearing was held in this matter before a duly authorized Administrative Law Judge ("ALJ") on February 18, 2010 at the offices of the Commission in Chicago, Illinois. The ALJ granted the Petitions to Intervene filed by the following parties: The Citizens Utility Board ("CUB"), the People of the State of Illinois ("AG"), BlueStar Energy Services, Inc. ("BlueStar"), and the Illinois Competitive Energy Association ("ICEA"). Counsel for the City of Chicago ("City") filed an appearance. At the status hearing, the parties agreed to a schedule for a paper hearing. No other parties objected to the subsequent ALJ ruling on February 18, 2010, which identified the schedule and provided an opportunity for parties to object to it.

With ComEd's Petition, it included: Attachment A, the Program Design Document ("PDD"), Exhibit A.1, On-Bill Financing Eligible Measure Calculation Methodology, Exhibit A.2, Financial institution Request for Proposals, Exhibit A.3, Preliminary EE Loan Term Sheet & Underwriting Guidelines; Attachment B, Exemplar Tariff Revisions to General Terms and Conditions; Attachment C, Exemplar Tariff Revisions to Rider EDA; Attachment D, Exemplar Tariff Revisions to Rider UF; and Attachment E, Municipality List. In support of its Petition, the Company also provided the direct testimony of Timothy G. Melloch, Director, Energy Efficiency Programs (ComEd Ex. 1.0) and the direct testimony of Robert Garcia, Manager, Regulatory Strategies and Solutions (ComEd Ex. 2.0).

On March 2, 2010, Staff filed Initial Comments. On March 3, 2010, CUB/City filed Initial Comments. On March 4, 2010, the AG filed Revised Initial Comments. On March 12, 2010, BlueStar, Staff and CUB/City filed Reply Comments. On March 15, 2010, the AG filed Reply Comments. ComEd filed Reply Comments on March 22, 2010.

This order considers the Petition and the various attachments thereto as well as the verified initial and reply comments filed by the Company, Staff, City and Intervenors.

II. Applicable Law

The Company seeks approval of the Proposal, pursuant to the Electric OBF Law, Section 16-111.7, which provides that:

(a) The Illinois General Assembly finds that Illinois homes and businesses have the potential to save energy through conservation and cost-effective energy efficiency measures. Programs created pursuant to this Section will allow utility customers to purchase cost-effective energy efficiency measures with no required initial upfront payment, and to pay the cost of those products and services over time on their utility bill.

(b) Notwithstanding any other provision of this Act, an electric utility serving more than 100,000 customers on January 1, 2009 shall offer a Commission-approved on-bill financing program ("program") that allows its eligible retail customers, as that term is defined in Section 16-111.5 of this Act, who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which the electric service is being provided (i) to borrow funds from a third party lender in order to purchase electric energy efficiency measures approved under the program for installation in such home or condominium without any required upfront payment and (ii) to pay back such funds over time through the electric utility's bill. Based upon the process described in subsection (b-5) of this Section, small commercial retail customers, as that term is defined in Section 16-102 of this Act, who own the premises at which electric service is being provided may be included in such program. After receiving a request from an electric utility for approval of a proposed program and tariffs pursuant to this Section, the Commission shall render its decision within 120 days. If no decision is rendered within 120 days, then the request shall be deemed to be approved.

(b-5) Within 30 days after the effective date of this amendatory Act of the 96th General Assembly, the Commission shall convene a workshop process during which interested participants may discuss issues related to the program, including program design, eligible electric energy efficiency measures, vendor qualifications, and a methodology for ensuring ongoing compliance with such qualifications, financing, sample documents such as request for proposals, contracts and agreements, dispute resolution, pre-installment and post-installment verification, and evaluation. The workshop process shall be completed within 150 days after the effective date of this amendatory Act of the 96th General Assembly.

(c) Not later than 60 days following completion of the workshop process described in subsection (b-5) of this Section, each electric utility subject to subsection (b) of this Section shall submit a proposed program to the Commission that contains the following components:

(1) A list of recommended electric energy efficiency measures that will be eligible for on-bill financing. An eligible electric energy efficiency measure ("measure") shall be defined by the following:

(A) the measure would be applied to or replace electric energy-using equipment; and

(B) application of the measure to equipment and systems will have estimated electricity savings (determined by rates in effect at the time of purchase), that are sufficient to cover the costs of implementing the measures, including finance charges and any program fees not recovered pursuant to subsection (f) of this Section. To assist the electric utility in identifying or approving measures, the utility may consult with the Department of

Commerce and Economic Opportunity, as well as with retailers, technicians, and installers of electric energy efficiency measures and energy auditors (collectively "vendors").

(2) The electric utility shall issue a request for proposals ("RFP") to lenders for purposes of providing financing to participants to pay for approved measures. The RFP criteria shall include, but not be limited to, the interest rate, origination fees, and credit terms. The utility shall select the winning bidders based on its evaluation of these criteria, with a preference for those bids containing the rates, fees, and terms most favorable to participants;

(3) The utility shall work with the lenders selected pursuant to the RFP process, and with vendors, to establish the terms and processes pursuant to which a participant can purchase eligible electric energy efficiency measures using the financing obtained from the lender. The vendor shall explain and offer the approved financing packaging to those customers identified in subsection (b) of this Section and shall assist customers in applying for financing. As part of the process, vendors shall also provide to participants information about any other incentives that may be available for the measures.

(4) The lender shall conduct credit checks or undertake other appropriate measures to limit credit risk, and shall review and approve or deny financing applications submitted by customers identified in subsection (b) of this Section. Following the lender's approval of financing and the participant's purchase of the measure or measures, the lender shall forward payment information to the electric utility, and the utility shall add as a separate line item on the participant's utility bill a charge showing the amount due under the program each month.

(5) A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved between the participant and lender. Upon transfer of the property title for the premises at which the participant receives electric service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its electric utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial electric service.

(6) The electric utility shall remit payment in full to the lender each month on behalf of the participant. In the event a participant defaults on payment of its electric utility bill, the electric utility shall continue to remit all payments due under the program to the lender, and the utility shall be entitled to recover all costs related to a participant's nonpayment through the automatic adjustment clause tariff established

pursuant to Section 16-111.8 of this Act. In addition, the electric utility shall retain a security interest in the measure or measures purchased under the program, and the utility retains its right to disconnect a participant that defaults on the payment of its utility bill.

(7) The total outstanding amount financed under the program shall not exceed \$ 2.5 million for an electric utility or electric utilities under a single holding company, provided that the electric utility or electric utilities may petition the Commission for an increase in such amount.

(d) A program approved by the Commission shall also include the following criteria and guidelines for such program:

(1) guidelines for financing of measures installed under a program, including, but not limited to, RFP criteria and limits on both individual loan amounts and the duration of the loans;

(2) criteria and standards for identifying and approving measures;

(3) qualifications of vendors that will market or install measures, as well as a methodology for ensuring ongoing compliance with such qualifications;

(4) sample contracts and agreements necessary to implement the measures and program; and

(5) the types of data and information that utilities and vendors participating in the program shall collect for purposes of preparing the reports required under subsection (g) of this Section.

(e) The proposed program submitted by each electric utility shall be consistent with the provisions of this Section that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the electric utility.

(f) An electric utility shall recover all of the prudently incurred costs of offering a program approved by the Commission pursuant to this Section, including, but not limited to, all start-up and administrative costs and the costs for program evaluation. All prudently incurred costs under this Section shall be recovered from the residential and small commercial retail customer classes eligible to participate in the program through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act.

(g) An independent evaluation of a program shall be conducted after 3 years of the program's operation. The electric utility shall retain an independent evaluator who shall evaluate the effects of the measures installed under the program and the overall operation of the program, including but not limited to customer eligibility criteria and whether the payment obligation for permanent electric energy efficiency measures that will continue to provide benefits of energy savings should attach to the

meter location. As part of the evaluation process, the evaluator shall also solicit feedback from participants and interested stakeholders. The evaluator shall issue a report to the Commission on its findings no later than 4 years after the date on which the program commenced, and the Commission shall issue a report to the Governor and General Assembly including a summary of the information described in this Section as well as its recommendations as to whether the program should be discontinued, continued with modification or modifications or continued without modification, provided that any recommended modifications shall only apply prospectively and to measures not yet installed or financed.

(h) An electric utility offering a Commission-approved program pursuant to this Section shall not be required to comply with any other statute, order, rule, or regulation of this State that may relate to the offering of such program, provided that nothing in this Section is intended to limit the electric utility's obligation to comply with this Act and the Commission's orders, rules, and regulations, including Part 280 of Title 83 of the Illinois Administrative Code.

(i) The source of a utility customer's electric supply shall not disqualify a customer from participation in the utility's on-bill financing program. Customers of alternative retail electric suppliers may participate in the program under the same terms and conditions applicable to the utility's supply customers.

220 ILCS 5/16-111.7.

III. ComEd's Proposed OBF Program

A. Overview

ComEd witness Melloch testifies that ComEd has reviewed the requirements of Section 16-111.7 and, in his opinion, put together an OBF Program that meets the statutory criteria, including: (i) a proposed recommended eligible energy efficiency measure, (ii) a proposed request for proposals ("RFP") process, including a draft RFP and evaluation criteria, (iii) guidelines and processes governing the interaction among ComEd, the financial institution ("FI" or "lender") and vendors, and (iv) a reasonable cost recovery mechanism. ComEd requests that the Commission approve its Program.

Specifically, ComEd is requesting approval of its Program as set forth in the Program Design Document ("PDD"), including the following features: a proposed methodology to determine the eligibility of measures; the flexibility to add, delete, and modify recommended eligible measures according to the methodology to determine eligibility proposed in this docket; and the proposed revisions to ComEd's General Terms and Conditions, Rider EDA - Energy Efficiency and Demand Response Adjustment, and Rider UF - Uncollectibles Factor. ComEd Ex. 1.0 at 2.

Mr. Melloch informs the Commission that ComEd participated in the workshops held pursuant to the Electric OBF law. ComEd has incorporated a number of the suggestions made by stakeholders, including: a financing term of no greater than 10

years, consideration of the Fair Isaac Corporation (“FICO”) credit score or utility bill history as options for determining credit worthiness of applications, issuance of a joint RFP on behalf of all utilities, preparation of a common PDD format, and a life cycle saving approach. Also, ComEd proposes that Staff reconvene the workshop participants following completion of the RFP process so that ComEd can present the results of the RFP and provide an update on Program development. ComEd Ex. 1.0 at 7.

B. Identification of Eligible Participants

Subsection (b) of Section 16-111.7 defines the eligibility criteria for the OBF Program. Specifically, the OBF Program must be offered to ComEd’s “eligible retail customers, as that term is defined Section 16-111.5 of [the] Act, who own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which electric service is being provided.” 220 ILCS 5/16-111.7(b). ComEd witness Melloch states that participants must be property owners and take electric service at the premises. ComEd Ex. 1.0 at 9.

ComEd notes that Section 16-111.5 of the Act defines the term “eligible retail customers” as “those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs, other than those retail customers whose service is declared or deemed competitive under Section 16-113 and those other customer groups specified in [Section 16-111.5], including self-generating customers, customers electing hourly pricing, or those customers who are otherwise ineligible for fixed-price bundled tariff service. 220 ILCS 5/16-111.5(a). Also, Mr. Melloch testifies that the conditions under which an ARES customer can participate are the same as if the customer were taking bundled service from ComEd. In other words, he states that residential customers taking their electric supply service from an ARES would be permitted to participate in the Program if those customers also own a residential single family home, duplex, or other residential building with 4 or less units, or condominium at which electric service is provided. ComEd Ex. 1.0 at 9.

According to Mr. Melloch, ComEd does not intend to allow nonresidential customers to participate in the OBF Program at this time. He opines that the decision of whether to include nonresidential customers in the OBF Program is at ComEd’s discretion and cites 220 ILCS 5/16-111.7(b) for support.

C. Details of ComEd’s OBF Program

1. Recommended Eligible Energy Efficiency Measure(s)

Mr. Melloch testifies that an energy efficiency measure is an individual technology (e.g., energy efficient refrigerator) or service (e.g., air conditioner tune-up) that reduces the amount of electricity used when installed or performed. According to Mr. Melloch, the statute provides specific guidance concerning selection of eligible measures, and requires that each eligible measure satisfy the requirements of a two-part definition. The first part provides that the measure “be applied to or replace electric energy-using equipment.” 220 ILCS 5/16-111.7(c)(1)(A). The second part requires that “application of the measure to equipment and systems will have estimated electricity savings (determined by rates in effect at the time of purchase), that are sufficient to

cover the costs of implementing the measures, including finance charges and any program fees not recovered pursuant to subsection (f).” 220 ILCS 5/16-111.7(c)(1)(B). Put simply, Mr. Melloch states that to be an eligible measure, its application, either as a retrofit of an existing system or as a replacement of an appliance, would have to create savings over the life of the measure sufficient to cover its costs of implementation and financing.

Mr. Melloch explains that ComEd proposes that the electricity cost savings be estimated for the package of energy efficiency measures to be installed for the customer. Specifically, savings will be calculated over the life cycle of the measures, meaning that the electricity savings realized over the useful life of the measure must exceed the customer’s net cost for the measures, including finance charges. The useful life of measures will be determined based on reputable published data, such as the data publicly available on the United States Environmental Protection Agency’s Energy Star website. Finally, the electricity savings must be determined using the applicable ComEd rates for electric service in effect at the time of the purchase. ComEd Ex. 1.0 at 11.

The total customer cost of implementing the measure (including finance charges) equals the cumulative amount of the customer’s loan payments, which Mr. Melloch testified is calculated as follows. First, any utility rebates, other applicable rebates or incentives, and applicable federal income tax credit that the customer will receive will be estimated and subtracted from the total measure cost, which will be determined based on the prescriptive turnkey costs, *i.e.*, the cost to complete the project from start to finish, including the equipment or appliance, materials, installation, labor, and other charges such as State tax. ComEd is also proposing that up to 20% of loan proceeds may be used to pay for equipment and materials that are related and necessary to the implementation of the measure. This amount (prescriptive turnkey costs less rebates, incentives or credits) equals the customer’s net capital cost and the net amount be financed via the loan.

Second, Mr. Melloch continues, total loan payments over the applicable loan duration will then be calculated according the lending facility terms and interest rate, the sum of which will equal the cumulative loan payments and the total customer cost for purposes of the eligibility analysis. Because ComEd is proposing that the Program fees be recovered through the cost-recovery mechanism set forth in subsection (f) of Section 16-111.7, such fees are not included in the customer cost of implementing the measures. As a result, Mr. Melloch states in order for a measure to be eligible, the electricity cost savings must equal or exceed the total customer cost of implementing the measures.

ComEd is proposing energy efficient refrigerators as the recommended eligible measure under its Program, at this time. ComEd is requesting flexibility from the Commission to add, delete, or modify its proposed measures because revised inputs to the eligibility methodology could result in new measure passing, existing measure failing or other modifications.

2. Request for Proposals Process

According to Mr. Melloch, as part of the workshop process, the five electric and gas utilities subject to the requirements of Section 16-111.7 and 19-140 of the Act collaborated in the preparation of a proposed RFP to be issued on behalf of all such utilities by the Illinois Energy Association (“IEA”). ComEd asserts that there a number of benefits to conducting a joint RFP process. First, because subsection (c)(7) of Section 16-111.7 caps the total outstanding amount financed under each utility’s Program at \$2.5 million, the Program size per utility is relatively small and may limit the pool of potential FIs interested in participating in the Program. By joining together, the five utilities can aggregate their Program requirements and present a \$12.5 million total financing requirement to FIs. ComEd states that the utilities believe this larger amount will be more attractive to prospective FIs and aid in the recruitment and procurement of an effective FI partner. Also, a joint RFP will simplify the tasks and processes for FIs responding to the RFP, providing a centralized way of responding to all utilities.

Second, ComEd maintains that having a single FI partner will simplify Program implementation and avoid confusion for those customers served by different electric and gas utilities. Third, the joint RFP process ensures consistency among the five utilities’ RFP approach and simplifies the Commission’s review and approval process. Finally, ComEd notes that a common financing program adopted by the utilities can yield implementation efficiencies in marketing and administration, including FI fees.

Mr. Melloch testifies that the joint RFP process is designed to provide an FI partner for the Program that will offer the following services: (i) assist in final structuring of the Program; (ii) establish a lending facility of up to \$12.5 million (\$2.5 million per utility); (iii) originate and provide loans to eligible residential energy users; (iv) coordinate with vendors and utilities; (v) perform credit analysis of prospective borrowers and make loan credit decisions, applying underwriting guidelines as agreed upon with the utilities; (vi) notify each utility upon approval of a loan and disbursements of funds; using information exchange protocols to be established; (vii) administer the loans, with loan collections being performed by the utilities; and (viii) provide monthly reports on lending activity and the loan portfolio. Additional services, to be determined through the RFP and negotiation process, may include (i) marketing of Program loans; (ii) assisting the utilities in developing and managing the vendor network; and (iii) providing additional lending support over and above the \$2.5 million cap subject to the utility’s election and Commission approval. In addition to setting forth the services to be procured, Mr. Melloch informs the Commission, the RFP contains sections concerning Program background, structure and terms of the proposed lending facility and loans, a prescribed format and content for the FI proposals, and a description of the RFP process, including evaluation criteria and a timeline that will lead to selection of the FI partner, negotiation and execution of implementing agreements for the facility.

The Company proposes a minimum loan amount of \$500 and maximum loan amount, to be determined on a case-by-case basis based on credit worthiness, of \$20,000. Accordingly Mr. Melloch, the Company proposes a loan duration of up to 10 years.

Further, Mr. Melloch testifies that the utilities have proposed evaluation criteria, consistent with subsection (c)(2) that emphasize interest rate, origination fees and credit terms, with a preference for those bids containing the rates, fees, and terms most favorable to participants. The utilities propose to form an Evaluation Committee, to be coordinated by the IEA, which will evaluate each FI proposal qualitatively according to the Proposal Evaluation Worksheet. The Proposal Evaluation Worksheet will evaluate the proposals based on the following criteria, which are each given various weights: 1) loan pricing (interest rate pricing and fees); 2) loan tenors, prepayment, and other terms; 3) loan origination process; 4) FI experience and qualifications; 5) experience and qualification of specific staff proposed; 6) loan marketing and geographic coverage; 7) proposed additional services; 8) program fee proposal; and 9) potential to expand lending. ComEd Ex. 1.0 at 18.

3. Coordination among ComEd, Lender and Vendors to establish Terms and Processes

According to ComEd witness Melloch, ComEd currently partners with leading businesses to promote energy efficiency in the home and workplace and will evaluate those relationships for opportunities to deliver the measure(s). He notes that the Company's trade allies include contractors, engineers, energy service companies, architects, retailers, and vendors who have been educated about ComEd's programs and are committed to following the rules and processes. Currently there are 260 trade allies listed on ComEd's website, although not all provide services or offer products eligible under the Program. These trade allies must complete an application indicating professional licenses and certifications, provide three energy efficiency references, attend a Trade Ally Workshop, and demonstrate familiarity with ComEd's existing programs. In some cases, Mr. Melloch testified, ComEd may conduct an inspection of an applicant's project. ComEd Ex. 1.0 at 19.

In terms of marketing the program, Mr. Melloch states that the loan program will be marketed by the vendors, the lender, and ComEd, but that the vendors will bear primary responsibility for marketing the energy efficiency loans because of their immediate proximity to the point of sale with customers. To assist vendors in their marketing efforts, ComEd and the lender will provide approved loan product information, including loan application materials and referrals to the lender's offices for loan origination. In addition to the vendors, ComEd may also market the Program through its existing energy efficiency programs, billing inserts, and other appropriate channels. Also, Mr. Melloch notes that as reflected in the RFP process, it is expected that the FI partner may market the loan product to its existing customers and make referrals to ComEd and qualified vendors. Vendors will also be trained to explain available rebates, assist in capturing federal tax credits, and help customers in completing the loan application forms. ComEd Ex. 1.0 at 20.

Mr. Melloch testifies that in order to qualify to participate in the Program, vendors must provide ComEd with qualifying information, including, for example, specifications on energy efficiency products and services offered, energy efficiency specifications and warranties on equipment offered, years of experience, staffing, experience in the field of energy efficiency, customer references, financial data such as bonding capacity and

insurance, and acceptance of Program business terms and methods. Also, Mr. Melloch states that depending on their qualifications, vendors may also be required to participate in a ComEd-approved training programs. Organizations such as the Residential Energy Services Network (“RESNET®”) and Building Performance Institute (“BPI”) may be used to screen, train, and qualify vendors. Vendor’s licenses and certifications will also be reviewed as appropriate. ComEd Ex. 1.0 at 21. Finally, with respect to vendors, Mr. Melloch states that evaluation of contractor performance will be performed on an on-going basis.

4. Lender Approval Process and Subsequent Billing and Payment Arrangements with ComEd and Participants.

Mr. Melloch testifies that, although the details of the credit check process will be negotiated and finalized through the RFP process with the FI, it is anticipated that the following criteria will be applied to loan applicants: 1) lender will obtain confirmation from ComEd that applicant is currently a ComEd customer; 2) lender will confer with ComEd to determine whether applicant is current with respect to utility bill payment and ascertain any late payment history; 3) lender shall undertake a confirmation of applicant’s income and property ownership; 4) lender shall calculate a debt ratio to disposable income, the result of which must not exceed 50%; 5) lender shall perform a disposable income calculation to include a prudent fraction (e.g. 70% of estimated energy cost savings associated with the project); 6) lender shall obtain applicant’s FICO score, with minimum score levels to be determined during negotiations with the FI; and 7) lender may make a security interest filing on behalf of ComEd for the project equipment at ComEd’s discretion.

Consistent with subsection (c)(4) of Section 16-111.7, ComEd proposes that, on a monthly basis, the lender will report to ComEd summary information concerning all loans originated during the applicable period. The lender will provide ComEd with the participant’s account number, interest rate, amount financed, and loan duration. According to Mr. Melloch, the information sharing protocols and formats will be finalized during negotiations with the selected FI. Also, ComEd is proposing to add a separate line item on the participant’s utility bill showing the amount due under the program each month.

Mr. Melloch states that the lender will make disbursement of loan proceeds directly to the vendor in a single payment following completion of the installation and acceptance of the installation by the borrower. Further, any interest or carrying costs incurred by the vendor during the short construction or installation period can be capitalized in the vendor’s price. Thus, Mr. Melloch testifies that the loans will be for term finance only and will disburse immediately following project completion and acceptance. ComEd Ex. 1.0 at 23.

5. Participant Rights and Obligations

Mr. Melloch testifies that, because subsection (c)(5) of Section 16-111.7 states that the loan is the sole responsibility of the participant and any dispute that may arise concerning the loan shall be resolved between the participant and the lender, ComEd is excluded from any such dispute. Accordingly, the utilities have requested information

concerning the FI's suggested procedures for resolving any disputes with Program participants and details will be finalized during negotiations.

Also, Mr. Melloch notes that in the event the underlying property at which the participant receives electric service is transferred or the participant otherwise terminates service at the premises, subsection (c)(5) provides that the participant will be required to pay his or her utility bill in full, including all amounts due under the Program. In practice, Mr. Melloch testifies that when ComEd receives notification either of the transfer of title or that the participant wishes to terminate service, it will issue a final bill to the participant for payment in full of all charges, including the amount financed under the Program.

6. ComEd's Rights and Obligations

As required by subsection (c)(6) of Section 16-111.7, Mr. Melloch testifies that ComEd must remit payment in full to the lender each month on behalf of the participant. Because participants will be on different billing cycles, the RFP anticipates a process whereby ComEd will aggregate all loan payments from customers and make an aggregated payment monthly (or semi-monthly, as agreed) to the FI partner. Further procedures will be finalized during negotiations with the selected FI.

Mr. Melloch also notes that in the event a participant defaults on payment of its electric utility bill, ComEd must still make its monthly payment to the lender. Moreover, ComEd is entitled to recover all costs related to a participant's non-payment through the automatic adjustment tariff established pursuant to Section 16-111.8 of the Act, i.e., ComEd's Rider UF.

Mr. Melloch notes that with respect to retaining a security interest in the measures purchased under the Program, ComEd intends to evaluate its options concerning the security interest on a case-by-case basis because of the expense related to perfecting a security interest and taking back possession of a measure.

According to Mr. Melloch, pursuant to subsection (c)(5) of Section 16-111.7, amounts due under the Program are amounts owed for residential electric service. Thus, in the event a participant fails to pay its utility bill, the participant is subject to ComEd's disconnection provisions. ComEd Ex. 1.0 at 26.

7. Lending Limits

Under the joint RFP process, Mr. Melloch states, ComEd intends to solicit proposals for the full \$2.5 million credit facility. ComEd has not made a determination of whether petitioning the Commission for an expansion of the amount is either needed or appropriate. ComEd. Ex. 1.0 at 27.

D. Estimated Program Budget

ComEd witness Melloch notes that, pursuant to subsection (f) of Section 16-111.7, ComEd proposes to recover its costs related to start-up and administration incurred under the Program through Rider EDA. ComEd Ex. 1.0 at 27.

Mr. Melloch testifies that ComEd's start-up and administrative costs include, but are not limited to, third party administrative costs, internal management activities (e.g.,

marketing, advertising, reporting, risk analysis), information technology ("IT"), and incremental fully-loaded labor costs (i.e., creation of new positions). ComEd will also incur service costs charged by the FI, including loan program set up, loan origination and administration charges. This approach, Mr. Melloch opines, will reduce costs to the participating customers. As part of the RFP process, FIs will be asked to submit a budget of the fees charged for the delivery of its services. Mr. Melloch notes that the PDD includes a tentative estimated Program budget, which is preliminary and subject to change.

Further, Mr. Melloch states that because the statute requires both the addition of a separate line item charge on participants' utility bills and the ability to share information between the FI and ComEd, ComEd must implement changes to its IT systems to create this statutorily required functionality.

E. Independent Evaluation Planning

ComEd proposes that, during the three year period preceding the independent evaluation, both the FI partner and vendors will be required to collect and submit data regarding the operations of the Program. Mr. Melloch testifies that ComEd proposes that the FI partner collect and submit the following data: 1) loan applications - number of applications, number of approvals, approval times, approval date to funding, number of rejections, and reason for rejections; 2) booked loans - number of booked loans, loan amounts and tenors, types of energy efficiency projects, and total investment amount of energy efficiency projects; and 3) collections performance - aging receivables, defaults and bad debts, service suspensions, recoveries, and actual final losses.

In addition, Mr. Melloch informs the Commission that qualitative analysis will be conducted concerning Program experience of customers, vendors, and lender, which will assess the experience and satisfaction of each key stakeholder with the Program financing methods.

ComEd proposes to retain an independent evaluator through an RFP process. Similar to the RFP developed for the solicitation of the independent evaluator for its energy efficiency programs, ComEd intends to develop an RFP that includes a defined scope of work and a list of potential bidders. ComEd also proposes that the independent evaluator be hired early in the process, ideally as soon after Commission approves the Program as possible. Mr. Melloch testifies that it is important for ComEd, the FI, and vendors to know what types of data must be collected from the inception of the Program rather than after three years have passed. ComEd Ex. 1.0 at 30.

F. Proposed Tariff Changes

ComEd recommends that the following tariff changes be made in a compliance tariff filing within 30 days after the date the order is entered.

1. General Terms and Conditions

ComEd witness Garcia testifies that the Company's General Terms and Conditions ("GT&C") are tariff provisions generally applicable to all tariffs included in ComEd's Schedule of Rates, to electric service provided by ComEd, and to retail customers located in ComEd's service territory. Mr. Garcia states that the GT&C should

be modified to conform with ComEd's authority under the law, which allows ComEd to place applicable charges on the electric service bills of customers who are participating in the Program and disconnect electric service to participants that default on the payment of those charges. Further, he notes that disconnection would only be undertaken in conformance with the relevant provisions of Part 280 of the Commission's rules and the Act. Mr. Garcia states that the charges that will be applied to the electric service bills of a participating customer will be reflected on a separate line item, apart from other applicable charges. ComEd Ex. 2.0 at 6.

2. Rider EDA

Mr. Garcia states that Rider EDA is a cost recovery and tracking tariff that was approved by the Commission in Docket 07-0540 to fulfill the cost recovery provisions of Section 8-103 of the Act. ComEd Ex. 2.0 at 7. According Mr. Garcia, ComEd proposes to modify Rider EDA to extend all the key features of that cost recovery and tracking mechanism to costs incurred under the OBF Program. The revisions to the definition of "Incremental Costs" in the Definitions section of Rider EDA describe the costs of the Program that ComEd seeks to recover through the rider. The revisions mirror how recoverable costs are defined for energy efficiency and demand response programs. The revisions to the "EDA Computation and Application" section reflect that the cost to develop, implement, administer, and evaluate the Program will be recovered only from residential customers. This revision is proposed, Mr. Garcia explains, because, at least initially, the Program will be available only to residential customers. Finally, the revisions to the "Annual Reporting" section expand the scope of the required internal audit examination to include the Program costs. Such modifications, Mr. Garcia opines, are in accordance with subsection (f) of Section 16-111.7 of the Act and should be approved by the Commission. ComEd Ex. 2.0 at 9.

Mr. Garcia testifies that the costs recovered through Rider EDA will not have an impact on the overall portfolio budget set by subsection (d) of Section 8-103 for ComEd's energy efficiency and demand response plan. ComEd Ex. 2.0 at 10.

3. Rider UF

According to ComEd witness Garcia, Rider UF is a tariff that allows ComEd to recover uncollectible costs. ComEd is seeking to recover uncollectible costs associated with the Program, as permitted under subsection (c)(6) of Section 16-111.7 of the Act and is proposing clarifying revisions to Rider UF to remove ambiguity regarding the recovery of uncollectible costs incurred by ComEd related to the Program through Rider UF. ComEd Ex. 2.0 at 12.

Mr. Garcia testifies that ComEd will recover the uncollectible costs it incurs from the Program from residential customers because only residential customers will initially be eligible to participate in the Program. Further, ComEd will track the recovery of uncollectible costs associated with the Program together with the distribution-related uncollectible costs ComEd incurs that are associated with residential customers. Mr. Garcia explains that no separate line item will appear on residential customer bills, but that rather the costs will be incorporated into the customer charge, standard metering

service charge and distribution facilities charge line items applicable to residential customers. ComEd Ex. 2.0 at 13.

IV. Proposals Accepted by ComEd

The following issues are Staff or intervenor proposals that ComEd has accepted or requests for ComEd to clarify its position.

A. Selection of Eligible Measures

CUB/City assert that the eligible measures should be determined after the financial institution has been selected. The RFP for the FI has not yet been completed, so it is premature to prescribe a measure to - or proscribe other measures from - the program prior to possessing the information, such as the interest rate of the loan, which can only be determined once the FI has been selected. CUB/City recommend the Commission order that a workshop be held once the FI has been selected and a final list of measures proposed so Staff and other stakeholders can review and understand the final OBF Program. CUB/City Comments at 2-3.

ComEd responds by pointing out that it requested that the Commission grant it the flexibility to add, delete, or modify the measures included in the Program, subject to each passing the eligibility methodology. Assuming the Commission grants ComEd the requested flexibility, ComEd will retest all measures originally tested prior to Program launch both to confirm the eligibility of energy efficient refrigerators and to determine whether any additional measures might be eligible. ComEd also restates its proposal that Staff reconvene the workshop participants following completion of the RFP process so that ComEd can present the results of the RFP and provide an update on Program development.

The Commission finds ComEd's approach to be reasonable and also to address the concerns raised by CUB/City and it is adopted. Once the final list of eligible measures is known, it should be filed with the Commission.

B. Lender RFP/Affiliated Interests

Staff does not object to the process and content the Company proposes for the RFP component of the OBF program. Nevertheless, Staff has identified a potential issue: some financial institutions meet the definition of "affiliated interest" set forth in Section 7-101(2) of the Act. Consequently, Staff opines, if the winning bidder were an affiliated interest of one or more of the affected utilities, the affiliated utilities would have to file a petition seeking Commission approval under Section 7-101 to enter into a contract with the winning bidder. Such a petition, Staff notes, would inevitably cause a delay in the selected financial institution signing a contract with at least some, if not all the utilities.

In Staff's opinion, a Section 7-101 proceeding can be avoided in either of two ways: the utilities may (1) agree to exclude financial institutions that are "affiliated interests" from participating in the RFP; or (2) modify the RFP process such that it meets all the criteria for the competitive bidding waiver for Commission approval of contracts with affiliated interest. See 83 Ill. Adm. Code 310.70.

BlueStar agrees with Staff's proposal. CUB/City state that they are not clear what affiliated interests would meet Staff's definition and comment only to note the lack of clarity. CUB/City have no objection to any of Staff's proposals to avoid a conflict of interest and recommend that the Commission direct the RFP Evaluation Committee to consider this issue.

ComEd acknowledges Staff's concerns and agrees with CUB/City that the utilities consider this issue during the RFP evaluation process.

Staff has raised a legitimate concern that some FIs that respond to the RFP may be affiliated interests of one or more of the utilities. ComEd acknowledges Staff's concerns and agrees with CUB/City that the utilities consider this issue during the RFP evaluation process. The Commission finds this approach to be reasonable.

C. Vendor Network

To the extent that CUB/City want clarification regarding the ability to leverage ComEd's existing vendor network, ComEd responds that the OBF Program represents an entirely new offering for ComEd. Because ComEd currently does not contract with vendors regarding the sale of energy efficient refrigerators, ComEd is reviewing the extent to which its existing vendor network can be utilized, and will continue to review its existing network in the future when new measures are added.

D. Fast Approval Process

The AG recommends that the Company provide more detail in the PDD or RFP as to how it will provide quick approval or pre-approval of loans to participants. It would be beneficial, the AG notes, if a customer could obtain approval while visiting an appliance store. Accordingly, the AG requests that the Commission require ComEd to describe in the PDD and RFP how communication between the vendor, lender, and ComEd will expedite the customer loan approval process.

With respect to the AG's proposal for a quick loan approval process, ComEd argues that this is not required by the statute. ComEd, however, points out that its Program and RFP are already designed to take into account the value of an expedited approval process.

The Commission agrees that quick loan approvals will be beneficial to the OBF Program, and we expect the utilities to take this into consideration, to the extent possible, when selecting the FI.

E. Acceptance

The AG observes that ComEd proposes that the lender make disbursements of loan proceeds directly to the vendor upon installation of the measure and acceptance by the customer. The AG states that ComEd must make it clear how the customer will demonstrate acceptance of the measure by the vendor and how this information will be communicated to the lender before making its disbursements. According to the AG, this information needs to be stated clearly in the PDD and the RFP. BlueStar support the AG's proposal.

In response to the AG's request for clarification on when acceptance occurs, ComEd notes that customer acceptance will occur when the customer signs for the delivery or installation of the measure. ComEd further expects that any disputes will be resolved between the retailer or manufacturer, if applicable, and the participant in the same way the retailer, or manufacturer, resolves disputes with respect to its other customers.

The AG is not clear in stating what it is looking for, but in the Commission's view, ComEd's approach is found to be reasonable and to address the AG's concerns.

F. Prepayment

The AG recommends that prior to approval of the Program, the Commission should require ComEd to provide in the PDD that the customer may voluntarily pay off the loan early with no penalty. Also, the PDD must provide that ComEd will make payment in full to the lender in the event of any early pay off by the customer. Lastly, the RFP should specifically state the pay off plan to the lender.

ComEd notes the AG's concern and states that the draft RFP specifically addresses issue. The section entitled "Prepayment Option" provides that the option to prepay the outstanding loans in whole without penalty is expected and that partial prepayment options are to be investigated. ComEd also confirms that it will provide timely payment in full to the lender if it receives payment in full from the participant.

The Commission finds ComEd's proposal to be reasonable.

G. Cost Sharing Mechanism

In response to Staff, ComEd confirms that a cost sharing mechanism is in place for the RFP process and the PDD.

H. Filing requirements - Sample Contracts

Subsection (d)(4) requires the proposed Program include sample contracts and agreements necessary to implement the measures and program. ComEd's proposed Program does not include sample contracts and agreements nor does it directly address the requirement. Staff recommends ComEd address this requirement in its reply comments.

In reply, ComEd states that to ensure that it complied with this requirement, ComEd included drafts of the RFP, the Preliminary Energy Efficiency Loan Term Sheet & Underwriting Guidelines and the Proposal Evaluation Worksheet. ComEd also notes that Staff found the requirement to have been satisfied by other utilities, such as Nicor, where Staff noted that Nicor's proposal anticipates that lenders will provide standard loan documents as part of the RFP. Because the utilities will be issuing a joint RFP, ComEd clarifies that it joins the other utilities in their anticipation that lenders will provide standard loan documents as part of the RFP.

The Commission finds ComEd to have answered Staff's concern and further orders the Utility to file standard loan documents once they are finalized with the FI.

I. Extension to Commercial Customers

The AG notes that, although the Company only intends to offer the Program to residential customers initially, ComEd could, at a later date, choose to add small commercial customers to the program. The AG and CUB/City recommend that the Commission make it clear that any Program-related costs that arise from the inclusion of small commercial customers will be assigned to that customer class, and not residential customers.

ComEd concurs with the AG that should it decide to expand the Program to non-residential customers, those costs will be assigned to that customer class and not residential customers.

The Commission finds this to be appropriate.

J. Section 8-103 costs and energy savings

CUB/City raise a statutory construction question. Namely, CUB/City ask whether the limit contained in Section 8-103 on how much retail customers may be charged for energy efficiency and demand response plans applies to the costs to be recovered for the OBF Program. Also, CUB/City wonder whether the Company intends to count the energy efficiency measures installed under the OBF Program towards achievement of ComEd's statutory energy efficiency goals.

Both CUB/City and the AG ask ComEd to clarify whether ComEd considers the additional, incremental costs associated with the Program to be subject to the spending screens set forth in Section 8-103 and whether any savings achieved under the Program will be counted toward the achievement of the statutory energy savings goals of Section 8-103. In response, ComEd states that it does not consider the costs incurred under Section 16-111.7 to be subject to the spending screens set forth in Section 8-103. Indeed, ComEd opines that Section 8-103 is clear that the spending screens apply only to "energy efficiency and demand-response measures implemented pursuant to this Section [8-103]." 220 ILCS 5/8-103(d). Moreover, Section 16-111.7 and Section 8-103 appear in entirely different articles of the Act (Article XVI and VIII, respectively) and do not cross-reference each other with respect to any cost limitations or energy savings. Each Section was enacted for a different purpose (i.e., developing an energy efficiency and demand response plan for all of the utility's customers and designing an on-bill financing program), each employs a different methodology for determining the eligibility of a measure, and Section 8-103 sets forth annual energy savings goals whereas Section 16-111.7 does not. Indeed, the only way in which the two relate is that Section 16-111.7, in lieu of directing that a separate rider be created for cost recovery of Program costs, directs that utilities instead take advantage of the rider already established under Section 8-103 for such cost recovery.

With respect to whether any energy savings achieved under the Program will be counted toward the achievement of the statutory energy savings goals set forth in Section 8-103, ComEd responds that, consistent with its approach to the costs, energy savings realized by a measure financed under the Program will not, for that reason alone, be counted toward the Section 8-103 goals. ComEd recognizes, however, that a Program participant may take advantage of other incentives or programs offered under

ComEd's separate Energy Efficiency and Demand Response Plan ("EEDR Plan") in conjunction with the purchase of a measure under the OBF Program. Under that scenario, the independent evaluator for the EEDR Plan would determine what amount of energy savings, if any, should be counted for the EEDR Plan incentive(s) or program(s).

K. Customer Education

Staff states that customers who take advantage of the proposed OBF program should be informed about how their participation may affect their bill when changes in utility service occur. In particular, customers will need to know how moving to another location both within and outside the utility's service territory will affect their bill. In addition, it is important that customers understand that their utility service may be subject to disconnection for non-payment of on-bill financing charges. Furthermore, customers should be informed of conditions under which the balance of the amount borrowed would become due. Finally, customers whose service has been disconnected will need to know what options they may have to reconnect utility service. Accordingly, Staff recommends that the Company include, in its reply comments, a commitment to develop consumer information covering the above points and to provide a description of how the information will be communicated to customers.

CUB/City note that it is unclear from Staff's comments if they are intending to draft a type of "Universal Disclosure Statement" similar to what has been proposed with respect to electric retail competition or a general consumer education program. Either way, CUB/City support recommendations to provide customers participating in the OBF Program with information about their rights and responsibilities and look forward to providing customers with information about the program. The AG supports Staff's recommendation as an important consumer protection issue.

In response, ComEd agrees to include in the Program materials consumer information concerning the points raised by Staff.

The Commission finds Staff's customer education concerns to be valid and directs the Company to work with Staff to develop the information that will be provided to customers. The costs of providing this information is a program cost recoverable through the utility's automatic adjustment clause tariff.

L. Data Collection

Staff, supported by CUB/City, notes that ComEd proposes the collection of key financial data and also a qualitative analysis of the program experience of customers, vendors and the lender. In addition, Staff recommends data be collected on the types and characteristics of both measures replaced and installed. ComEd has no objection to Staff's proposal. The Commission agrees that this information is important for evaluation of the OBF Program.

M. Statewide Evaluator

CUB/City recommend that one statewide evaluator be retained to both facilitate consistent evaluation and comparison and to lower overall evaluation costs.

Although ComEd does not concede that issues related to the evaluation are relevant to this docket, ComEd states that it does not necessarily disagree that one statewide evaluator might facilitate consistent evaluation and comparison and lower overall costs. ComEd avers, however, that it is the electric utility that shall retain an independent evaluator and points out that it proposed in its PDD that it may seek to cooperate with the other affected utilities in order to conduct a joint RFP process to select an independent evaluator. In other words, ComEd is open to using an approach similar to that being used to conduct the joint RFP process for selection of a lender, and believes that lower costs and efficiencies can be realized under both joint RFP processes.

The Commission agrees that utilizing a statewide facilitator may be more efficient, but we recognize that it may not be feasible and leave this decision to the affected utilities through the RFP process for the evaluator.

V. Staff's Position

Staff's Initial Comments recognize that, because some of the statutory components of the OBF Program involve obligations of participating customers, lenders and vendors not currently chosen or identified, compliance with these statutory components will be addressed at the time the obligations arise. Staff's Initial Comments, therefore, only address those aspects of the OBF Program if, and to the extent, the program appears inconsistent with the statute.

A. Identification of Eligible Participants

Staff has determined that ComEd has identified those customers that are eligible for participation in its OBF Program in accordance with the Electric OBF Law.

B. Details of the OBF Program

1. Eligible Energy Efficiency Measures/Loan Origination Fees

Staff reviewed the proposed list of measures in conjunction with its review of the cost effectiveness methodology that ComEd proposed to use to screen eligible measures. Staff notes that ComEd's method does not include loan origination fees as a cost of implementing the measure because it is the position of the Company that these are program costs to be recovered through Rider EDA, pursuant to subsection (f), rather than a cost of implementing the measure to be incurred by the customer. Staff, however, recommends that loan origination fees be paid by customers receiving the loans rather than collected from all customers through Rider EDA. Accordingly, Staff recommends that ComEd modify its eligibility screening method to include origination fees as a customer cost.

In support of this recommendation, Staff suggests that ComEd's methodology is inconsistent with subsection (c)(1)(B), which states that the estimated electric savings must be sufficient to cover the cost to implement the measure, including finance charges and any program fees not recovered pursuant to subsection (f). From Staff's perspective, loan origination fees are part of the loan costs and are not program fees. Staff notes that, while loan origination fees are often charged up front to all customers applying for certain types of loans, subsection (a) of Section 16-111.7 provides that

customers are not required to make initial upfront payments. Staff views ComEd's proposal as addressing this issue by including the origination fee in the costs for recovery through Rider EDA. Staff, however, states that subsection (f) speaks to start-up and administrative costs and should not be interpreted so broadly to include loan costs of individual customers. Staff opines that ComEd's proposal creates a different problem in that it imposes the loan origination fees of individual customers participating in the OBF program onto all ratepayers.

According to Staff, if origination fees are included as incremental costs recoverable through Rider EDA, the cost portion of the cost effectiveness analysis is lowered, potentially making more measures eligible. However, it does so by spreading the costs of loan origination fees across all customers within the eligible service classes instead of having the customer receiving the loan pay the cost of processing credit checks and other paper work in the loan application process. Staff explains that, because loan origination fees are specific to each individual loan and the customer receiving the loan receives the benefits from the avoided costs associated with the measure, Staff believes that origination fees should be included in the customer cost of implementing the loan rather than be socialized across all customers and collected through Rider EDA.

Staff recommends that the payment of origination fees by the customer receiving the loan be addressed by either having the lender incorporate its processing costs in the interest rate to successful borrowers or having the lender include the origination fee in the loan amount to be repaid and financed. Staff asserts that either approach would avoid an upfront fee that the OBF Law forbids, while making the borrower responsible for this cost.

2. Vendors

Staff has reviewed the Company's testimony and proposal related to vendors and vendor qualifications. ComEd has addressed the relevant issues and Staff does not object to the Company's plan to further develop the vendor network and to further develop the vendor qualifications and agreements.

C. Proposed Tariff Changes

Staff reviewed the OBF Program tariff proposals of ComEd for electric service. Staff recommends that the Commission approve the Company's cost recovery plans for the OBF Program costs and the corresponding proposed tariff revisions, with the exception that Staff recommends that loan origination fees be excluded from Rider EDA. ComEd proposes to modify Rider EDA to extend the key features of that cost recovery and tracking mechanism to costs incurred under the OBF Program. Further, Staff has no objection to the accounting procedures related to the cost recovery provisions and program costs of the OBF Program as described by the Company, with the exception that Staff recommends that the Company present and confirm in its reply comments that an agreed cost sharing mechanism is in place with the other utilities implementing OBF Programs for the shared financial institution RFP and PDD costs.

D. Staff Reply Comments to the AG

1. Proposed Budget

In response to the AG's proposed budgetary cap, Staff notes that the law does not establish a cap on expenses. Accordingly, in Staff's view, the Commission may request the Company to cap expenditures and the Company may voluntarily agree to such a cap, but the Commission may not impose a cap.

Subsection (f) of Section 111.7 allows the Company to recover all prudently incurred costs of offering the Program including, but not limited to, all start-up and administrative costs and the costs for program evaluation. From Staff's perspective, the proposed budget is informational only and the Commission should determine whether actual expenditures are reasonable and prudent in a reconciliation, after detailed review of actual expenditures, costs and expenses with the benefit of adequate discovery.

Also, Staff urges the Commission to clarify in its Order that any approval of the OBF Program in this docket shall not be deemed an approval of associated budgeted amounts.

2. Security Interests

Staff notes the AG's position that the Commission should disallow any costs associated with obtaining a security interest. Staff agrees generally with the utility, however, that the costs may well outweigh the benefits of perfecting and enforcing a security instrument in connection with the financing of the measures. In the event that a security interest is taken in an energy efficiency measure, Staff believes that these costs should be recovered from the customer and not recovered from ratepayers generally.

Staff quotes Section (c)(6) of the Electric OBF Law that states that the utility shall retain a security interest, but Staff suggests that it is the FI that would retain the security interest in the energy efficiency measure and not the utility. Staff points to Illinois law that only the entity that lends the funds and holds the note may hold the security interest. Staff also suggests that it is the lender that will fund the loan and resolve defaults and other disputes. Staff opines that in order to satisfy the statute, the lender may permit the utility to retain control over the security interest.

Staff recommends that the right to perfect and enforce any security interest be exercised only in instances where the financing market generally would similarly perfect and enforce such a security interest for loans of this size and type. Otherwise, Staff argues, the participating customer (or ratepayers generally) may be paying for security not deemed necessary or worth it by lenders in connection with similar loans. Staff also recommends that FI bidders should identify these costs.

VI. CUB/City Position

CUB/City state in their Initial Comments that they participated in the workshop process, and appreciate the chance to provide comments on the Petitioner's program draft. Moreover, the Petitioner's proposed OBF Program is a step forward in advancing the General Assembly's purpose of promoting conservation and cost-effective energy

efficiency measures. 220 ILCS 5/16-111.7(a). CUB/City, however, have several specific concerns with ComEd's proposed OBF Program which are addressed below.

A. Proposed Budget

CUB/City also have several concerns with the Company's proposed budget and oversight of third-party contractors. First, CUB/City note that the proposed budget of the Ameren Illinois Utilities is much lower and that ComEd's proposed budget should be halved at a minimum. CUB/City also state that the Company has not fully explained what cost items the Company is including or why ComEd would incur additional third-party administrative costs or internal management activity costs. CUB/City state that using existing contractor networks as much as possible will lower overall program costs and lessen the burden of the FI to double-check Vendor credentials. Accordingly, CUB/City recommend that the Commission should require that ComEd provide clarification on the role of any contractor hired to oversee the Vendor network, along with information on associated costs. Also, they recommend that the Commission request detailed program cost information, and consider whether it would be appropriate to cap administrative expenses as it did for the Chicagoland Natural Gas Savings Program. See *In re North Shore Gas and Peoples Gas*, Docket 07-0241/07-0242 (consol.), Order at 183 (February 5, 2008) ("Peoples 2008").

B. FI Selection Process

CUB/City note that the affected utilities intend to conduct a joint RFP to find the FI and that the IEA is facilitating cooperation and coordination between the utilities. Further, the IEA will constitute an evaluation committee with representation from all participating utilities. CUB/City point to the North Shore/Peoples Gas OBF Petition that contains information that proposals will be reviewed and evaluated by committee members and their consultants, though IEA reserves the right to accept or reject any proposal that, in the sole opinion of IEA, does not fully reflect the objectives of this Program. See Docket 10-0090, NS-PGL Ex. 1.0 at 8. IEA also reserves the right to select one or more FIs, based on territorial or other considerations, although a single FI partner is contemplated presently as the best approach. CUB/City are concerned that the utilities' proposed process provides the IEA with veto authority over the final FI selection. It is unclear to CUB/City what additional value IEA brings to the process aside from having all four utilities participating in the RFP as members. Nor is it clear how, or if, the Commission or other stakeholders will be informed of IEA's deliberations or decision. CUB/City propose that the Commission name CUB/City, the AG, and Staff as members of the Evaluation Committee proposed by the utilities.

Also, CUB/City recommend that the RFP evaluation matrix be revised to place more emphasis on the first criteria, which is "Loan Pricing: interest rate pricing and fees" because having a low interest rate is possibly the most critical component of the RFP for consumers. CUB/City opine that points could be taken away from "Loan marketing & geographic coverage" and "additional services" and given to "Loan Pricing" in order to make that criteria more heavily weighted compared to the others.

C. Underwriting Criteria

CUB/City note that the Company intends to finalize underwriting criteria with the selected FI and it is not clear to what degree ComEd intends to use credit checks, CUB/City are concerned that use of credit checks to screen customers for eligibility is heavy-handed and will add unnecessary costs to the Program. Further, CUB/City point out that the utility is in possession of bill payment history for all its customers. This bill payment history, which represents a rich source of information about a consumer, should be the principal measure of a person's worthiness to obtain a loan under the Program. CUB/City opine that individuals with poor credit scores still often pay their utility bills and that people that could benefit from energy efficiency measures should not be denied access to the Program because of a less than ideal credit score. CUB/City recommend that the Commission find that the use of utility bill payment history is a prudent way to determine credit worthiness of prospective borrowers.

D. Continuation of Program during Evaluation

CUB/City state that it is unclear what will happen to the OBF Program while the evaluation is conducted and the Commission presents its findings to the General Assembly as required by statute. Moreover, ComEd's PDD does not provide for the required feedback from participants and interested stakeholders as required by subsection (g) of Section 16-111.7. Accordingly, CUB/City recommend that the program be continued during the pendency of the evaluation and to ensure that Program participants and interested stakeholders can provide feedback, the evaluator should present its findings as part of workshops held during the year provided for the evaluation.

E. Reconnection

In ComEd's proposed OBF Program, in the event of non-payment by a customer of loan amounts due, the utility may terminate service, under existing collection procedures. CUB/City note that ComEd does not address how a customer who has had their service disconnected can have their service reconnected. For example, assume that a customer is disconnected in March and applies for reconnection in May. It is unclear from Petitioner's filing what amount a customer who participates in the OBF Program would have to pay for reconnection. CUB/City recommend the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan.

F. CUB/City Reply Comments to Staff

1. Loan Origination Fees

CUB/City disagree with Staff's position that loan origination fees should be paid for by the customer receiving the loan - either by the lender incorporating its processing costs into the interest rate to successful borrowers or by the lender including the origination fee in the loan amount to be financed and repaid. CUB/City note that while no clear or consistent definition of "program costs" or "administrative costs" has been put forth in this proceeding, CUB/City believe that loan origination fees are program costs.

Moreover, CUB/City disagree with Staff's reasoning that the fees should be on the consumer because the consumer is the one that receive the benefits from the avoided costs associated with the measure. In CUB/City's view, there are societal, monetary and environmental benefits resulting from avoided electricity costs as well. Electricity generation sources are, for the most part, not a renewable resource and energy efficiency measures - such as those financed through an OBF Program - will reduce the overall amount of electricity used.

Also, CUB/City note that Staff's position would unnecessarily raise the cost of a eligible measure and thus limit either the number of measures which could be financed or the number of customers who could participate in the program. In CUB/City's opinion, documents prepared for the loan, checks on utility bill payment history and other functions are required for the program to operate efficiently and effectively and as such are program costs. These are administrative in nature and not different from any other program cost. Accordingly, CUB/City agree with ComEd that loan origination fees can be properly classified as "administrative costs" as provided for by Section 16-111.7(f) of the Act and recovered through ComEd's Rider EDA.

G. CUB/City Reply Comments to the AG

1. Budget Cap

CUB/City agree that the Company's proposed program costs are too high, but do not agree that a cap should be imposed. In particular, CUB/City note that it is not clear what types of costs are considered "program costs" as opposed to "administrative costs". CUB/City recommend that ComEd address this issue in its Reply Comments because in many other contexts, these are two separate and distinct types of costs.

2. Underwriting Criteria

CUB/City continue to believe that the best evidence on whether a customer will default under the OBF Program is the customer's utility bill payment history. However, CUB/City understand that as the OBF Program may include more expensive measures than currently contemplated by ComEd, the tiered approach to credit checks suggested by the AG may be appropriate. CUB/City recommend that any final determination on when it might be appropriate to use credit checks be reserved pending a final list of eligible program measures from the Utilities.

VII. AG's Comments

A. Program Costs

The AG notes that ComEd estimates its three-year program costs at \$4.177 million, or approximately 168% of the \$2.5 million amount provided for the Program under Section 16-111.7(c)(7) of the Act. The AG believes that the Company's proposal to spend more on the administration of the program than the total pool of money available is absurd. The AG proposes that a cap be implemented for the OBF Program, similar to the cap for North Shore/Peoples Gas Light & Coke Company's energy efficiency program, which capped the administrative costs at 5%. *Peoples 2008*. At the most, the AG believes the cap should be 10%.

B. Underwriting Criteria

The AG recommends a tiered approach to credit checks. For example, if the measure was under \$1,000, the customer's bill payment history could be used. For measures greater than \$1,000, a specific formula or methodology could be implemented that does not inflate the interest rate or cause additional costs to be socialized to ratepayers. The AG points out that the lender gets paid regardless of whether the customer pays the utility. Thus, the AG asserts that the lender will profit from extensive credit checks because the costs are passed through to ratepayers as program costs. The specific credit check methodology should be stated clearly in the Program Design Document, as well as the RFP.

C. Security Interest Methodology

The AG notes that ComEd intends to exercise its discretion, based on whether it is cost effective, when deciding whether to obtain a security interest. The AG states that ComEd has not provided sufficient information to explain when it would exercise its discretion. Further, the AG observes that ComEd witness Melloch to state that the "likelihood of recovering any significant monies by executing such a security interest on a refrigerator is remote, or sufficiently unlikely to cover the cost of fully executing such a security interest." ComEd Ex. 1.0 at 26. Also, the AG opines that a customer has a strong incentive to pay for the measure because of the potential for electric service cut-off.

Accordingly, the AG recommends that, through the RFP process, the lender should provide a cost breakdown related to security interest filings. The AG also recommends that the Commission disallow any costs associated with obtaining a security interest as not prudently incurred costs of offering the OBF Program.

D. AG Reply Comments to CUB/City

1. Continuation of Program during Evaluation

The AG believes that it is premature to support the CUB/City recommendation that the Program should continue during the pendency of the evaluation. The AG argues that there are many remaining issues, including Program costs, that must be worked out regarding the ComEd Program.

2. FI Selection Process

The AG agrees with CUB/City's recommendation to include CUB/City, the AG and Staff as members of the RFP evaluation committee, but believe that in order to make a meaningful contribution to the evaluation process, the AG and CUB should be voting members of the committee and not just advisors.

3. Underwriting Criteria

Although the AG continues to recommend its tiered approach to determine what type of credit check methodology to utilize, the AG would accept CUB/City's recommendation to rely solely on bill payment history.

4. Reconnections

The AG supports the CUB/City recommendation regarding the amounts owed to the utility to enable reconnection and believes that it adds an important consumer protection element to the Program.

E. AG Reply Comments to Staff

1. Security Interest Methodology

The AG notes from Staff's Initial Comments that the Company has not provided information on how it will keep costs reasonable when perfecting a security interest. Also missing, in the AG's opinion, is information as to when ComEd intends to perfect its security interest. The AG suggests that the service and related costs associated with a security interest should be excluded from the RFP and that this responsibility rests with ComEd. The AG states that there is no requirement that the utility has to file or perfect a security interest or that the lender needs to be responsible for the filing of the security interest.

VIII. BlueStar's Reply Comments

BlueStar is a retail electricity supplier, currently operating in Illinois, Maryland, Michigan, the Commonwealth of Pennsylvania and the District of Columbia. BlueStar also offers energy efficiency services through its subsidiary BlueStar Energy Solutions LLC.

A. Estimated Program Costs

BlueStar agrees with the AG that ComEd's proposal to spend more on the administration of the program than the total pool of money available is absurd. BlueStar concurs with the AG that a cap similar to that imposed on North Shore Gas and The Peoples Gas Light and Coke Company for its energy efficiency program would limit the Company's administrative expenses to \$125,000. While the OBF statute, Section 16-111.7 of the Act, does not establish any fixed-dollar or percentage amount for administrative program expenses, BlueStar asserts that the Commission should not permit any utility to spend more than 10%, or \$250,000, on such costs.

B. Loan Origination Fees

BlueStar agrees with Staff that loan origination fees are part of the loan costs and are not program fees. According to BlueStar, Subsection (f) speaks to start-up and administrative and program evaluation costs and should not be interpreted so broadly as to include loan costs of individual customers. As such, BlueStar argues that the origination fees should be paid by the customer receiving the loan and included in the cost of implementing the measure for purposes of cost effectiveness screening for measure eligibility. BlueStar agrees with Staff's recommendation that the payment of origination fees by the customer receiving the loan be addressed by either having the lender incorporate its processing costs in the interest rate to successful borrowers or having the lender include the origination fee in the loan amount to be repaid and financed.

C. Stakeholder Input in FI Selection

BlueStar agrees with CUB's concern that the Petitioner's proposed process provides the IEA with veto authority over the final FI selection. It is unclear to BlueStar what additional value IEA brings to the process aside from having all four utilities participating in the RFP as members. Similar to CUB, BlueStar proposes that those stakeholders that participated in the OBF workshops conducted by Staff be invited to become members of the proposed Evaluation Committee.

D. Evaluation

BlueStar supports the use of an independent evaluator for the OBF Programs. The Commission, and all stakeholders, will benefit from a coordinated evaluation process that enables comparison across the participating utilities. Thus, BlueStar agrees with CUB's recommendation that one statewide evaluator be retained to both facilitate consistent evaluation and comparison, and to lower overall evaluation costs. This evaluation process should begin as soon as possible under the terms of the statute so that any gap between the evaluation of the OBF Program, the Commission review of that evaluation and a decision on any necessary program modifications is as short as possible. BlueStar agrees with CUB's assertion that the program should be continued during the pendency of the evaluation. To ensure that Program participants and interested stakeholders can provide feedback, the evaluator should present its findings in a series of workshops held during the year provided for the evaluation.

IX. ComEd Reply Comments

A. Loan Origination Fees

Staff proposes that loan origination fees be paid by customers receiving the loans rather than collected from all customers through Rider EDA. ComEd asserts that Staff's argument is inconsistent with the statute's prohibition on upfront payments, incompatible with a plain reading of the statute and, if implemented, could jeopardize the launch of the Program.

ComEd argues that Staff's statement, that origination fees are a type of finance charge, is contrary to the plain dictionary definition of finance charge. ComEd also argues that Staff's position violates the statute's requirement that customer not have to pay an upfront fee. Accordingly, ComEd maintains that loan origination fees are properly included in the Program fees recoverable under subsection (f).

ComEd also notes that Staff mischaracterizes the scope of subsection (f) when it claims that it only speaks to start-up and administrative and program evaluation costs, when it actually provides for recovery of all prudently incurred costs of offering a program. ComEd states that loan origination fees are fees that will be incurred by the Program for establishing an account between the lender and customer, performing a credit review and miscellaneous paperwork associated with underwriting of the account. As such, ComEd avers, these costs associated with loan origination are administrative in nature and not different from any other cost ComEd will incur to implement the Program, e.g., information technology upgrades, billing, and customer service.

ComEd also opines that burdening the eligibility methodology with additional costs and fees may result in either no eligible measure to offer under the Program, limiting the models of energy efficient refrigerators offered under the Program, or foreclosing the eligibility of potential future measures.

B. FI Selection

In response to CUB/City's concern that the IEA has veto authority over the final FI selection, ComEd states that the IEA is conducting the RFP process acting on behalf of and coordinating with the Utilities jointly. In other words, ComEd argues that the IEA is an agent of the utilities that is subject to and works at the direction of the utilities. ComEd notes that CUB/City did not point to any specific language in support of their claim, but ComEd would not object to clarifying any language that appears to suggest that the IEA might have unilateral or unsupervised veto power.

ComEd further notes that ComEd witness Melloch testified extensively to the benefits of joint RFP process conducted by the IEA, including cost savings and efficiencies of consolidating the five RFP processes into one.

In response to CUB/City's and the AG's proposal to be involved in the FI selection process, ComEd states that their proposal is not permitted by the statute and should be rejected. ComEd proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders, which would be in addition to ComEd's earlier proposal that Staff reconvene the workshop participants after the RFP process is concluded.

CUB/City also propose to revise the RFP evaluation matrix. ComEd points out that "loan pricing: interest rate pricing and fees" already is the most heavily weighted criterion (25 point value). ComEd notes that Loan duration and Loan origination process directly impact and relate to the loan pricing and fees. Also, the criteria from which CUB/City propose taking away points directly relate to Program costs. Thus, ComEd appreciates CUB/City's concern, but notes that the importance of the interest rate and fees has already been addressed to the extent practicable.

C. Underwriting Criteria

ComEd states that the credit check process is a lender, not ComEd, obligation and consistent with subsection (c)(4), ComEd's proposed Program provides that the details of the credit check process will be negotiated and finalized with the lender selected through the RFP process. Consistent with this, ComEd notes that Staff describes subsection (c)(4) as a lender obligation.

CUB/City and the AG, however, attempt to transform this lender obligation into a ComEd obligation and recommend that the Commission require ComEd to apply a tiered credit check approach or bill payment history. ComEd notes that neither CUB/City nor the AG offers any details about how their approach would be implemented and administered. Further, there is no acknowledgement of the additional expense ComEd would incur to develop this.

According to ComEd, the statute places the credit check function squarely on the lender, but CUB/City's and the AG's proposal would effectively exclude the lender and

its expertise from the credit check process. Specifically, these proposals would foreclose the opportunity to solicit and rely on the lender's experience and expertise, including the wholesale preclusion of the use of standard industry practices to determine credit worthiness. ComEd also notes that it is unclear how the uncertainty surrounding this proposal would impact the willingness of lenders to respond to the RFP and could result in a higher interest rate to reflect the increased uncertainty and any perceived risk.

D. Reconnection

With respect to a participant whose service has been disconnected for nonpayment, CUB/City request that ComEd clarify what amount such participant must pay for reconnection. CUB/City recommend that the reconnection amount include only those loan payments missed since the disconnection and not the entire amount due under the loan. In response, ComEd notes that CUB/City's concern appears to be related to whether the terms of the loan will include an "acceleration clause" whereby the full amount of the loan becomes due after the borrower misses a certain number of payments, including any arrearages. ComEd believes that CUB/City's suggestion is reasonable, and notes that neither ComEd's draft RFP nor Preliminary Term Sheet and Underwriting Criteria addresses or requests an acceleration clause. Although ComEd will take CUB/City's suggestion into consideration in negotiating with Lenders, ComEd cannot now predict whether the lender(s) that respond(s) to the RFP will include such a clause or whether the inclusion of the clause will be negotiable. At a minimum, however, ComEd would require payment of any arrearage and any payments missed since disconnection before reconnection.

E. Security Interest

According to ComEd, Section 16-111.7 grants utilities subject to its provisions a security interest in the measure or measures purchased under the program. 220 ILCS 5/16-111.7(c)(6). With respect to whether ComEd would seek to perfect the interest and repossess the measure in each instance of a participant's default, ComEd witness Melloch testified that ComEd was taking a cautious and measured approach to the matter given the expense related to perfection and repossession. ComEd notes that Staff generally agrees with its position that the costs to perfect and enforce a security interest may outweigh the benefits.

Only the AG takes issue with ComEd proposal and recommends that the Commission should disallow any costs associated with obtaining a security interest as not prudently incurred. ComEd asserts that this is asking the Commission to not follow the law. The AG suggests that ComEd must provide a rationale or cost-benefit analysis to justify a right already granted by statute. If ComEd decides to perfect its security interest in a measure, the reasonableness of any costs incurred by ComEd related to such perfection and recovered through Rider EDA would be subject to review during the annual reconciliation proceedings required pursuant to the terms of Rider EDA.

F. Budget Cap

ComEd notes the CUB/City and AG proposals to impose a cap on ComEd's recoverable costs, but points out that a cap would violate the statute. Also, ComEd

opines that it was not required to submit a budget as part of the OBF program filing and that the proposed budget is informational only. ComEd states that it is not petitioning the Commission for approval of the initial cost estimates.

Subsection (f) directs that program costs be recovered through Rider EDA, which provides that costs are to be reviewed during the annual proceeding required by the tariff. These proceedings require a thorough and complete review of the costs flowing through the rider.

Further, ComEd argues that the AG's reliance on the uncontested cap on administrative expenses related to NS/PGL's energy efficiency rebate/incentive program is inapposite. That program was developed pursuant to a condition on the utilities' merger. This proceeding, in contrast, involves a statutory requirement to create a new and complicated consumer lending program that involves coordination with vendors and lenders and ongoing administration and evaluation. Moreover, ComEd is not consenting to the cap because the statute allows recovery of all its prudently incurred costs.

As far as CUB/City's comparison of ComEd's budget to other utilities, ComEd states that it can speak only to its budget and notes that it reflects a commitment to the long-term success of the Program.

G. Continuation of Program During Evaluation

ComEd expects the Program will continue after the initial three year period, but notes that Section 16-111.7 does not address this issue. ComEd states that it does not object to CUB/City's suggestion that the Program continue during the pendency of the evaluation, but notes that whether the Program continues will be based, in part, on whether the lending facility has been exhausted.

X. Commission Analysis and Conclusion

ComEd has proposed an OBF Program that complies with the statute and is approved with minimum modification. This approval recognizes that ComEd, in its reply comments accepted many of the proposals of various parties. Only a few issues remain that require discussion and are addressed below.

A. Eligible Measures

1. Loan Origination Fees

Although Staff is undoubtedly correct that loan origination fees are generally paid by the individual applying for financing, this is not a typical financing situation. These loans do not just benefit the individual participants as suggested by Staff, but rather the Commission agrees with CUB/City's view that lowering electricity usage has monetary and environmental benefits that will accrue to not just the individual customer but to society at large and, as such, these costs are appropriately recovered through Rider EDA.

Also, Staff's position would unnecessarily raise the cost of an eligible measure and thus could limit either the number of measures which could be financed or the number of customers who could participate in the program. Documents prepared for

the loan, credit checks and other functions are required for the program to operate efficiently and effectively and as such are program costs. These are administrative in nature and not different from any other program cost. Accordingly, the Commission agrees with CUB/City and ComEd that loan origination fees can be properly classified as “administrative costs” as provided for by Section 16-111.7(f) of the Act and recovered through ComEd’s Rider EDA.

For the same reasons, Staff’s proposal that the costs for perfecting a security interest be recovered from individual participants is rejected. These costs are similarly administrative in nature and should be recovered through Rider EDA.

2. Miscellaneous

Some questions arise regarding the energy efficiency measures that will be available. It is understood that the list is not final because the FI institution has not been selected, but the mechanics of how measures will be selected is unclear. Assuming that refrigerators will be the only measure available through ComEd’s program, will there just be a list of models that customers may select from? Or will there be a determination based on the refrigerator each individual is replacing? If it is just a list of eligible models, how often will the list be updated?

Also, does ComEd intend to make refrigerator recycling part of its program? The Commission notes that Ameren states the following in Ex. 1.5:

Appliance turn-in and recycling program. Rebates in the range of \$30 will be provided for the turn-in of second refrigerators. The old appliances will be collected and recycled with capture/destruction of ozone-depleting substances.

Will rebates be available for recycled refrigerators that would be counted as a reduction to the cost to implement the measure?

B. FI Selection

1. Intervenor as Members of Evaluation Committee

As with other issues in this proceeding, the Commission will turn to the plain language of the statute for guidance. It states that the utility shall issue an RFP and the “utility shall select the winning bidders based on its evaluation.” 220 ILCS 5/19-140(c)(2); 220 ILCS 5/16-111.7 (c)(2) (emphasis added).

CUB proposes that it, the AG and Staff be named members of the RFP Evaluation Committee. The AG goes further and proposes that it, CUB and Staff be named voting members. CUB does not specify what role it intends to play as a member of the Evaluation Committee, but its reason for the request is that it wishes to stay informed of deliberations or actions.

The Commission agrees with the Utility that, pursuant to the statute, selecting the FI is the utility’s responsibility and there is no basis for requiring the affected utilities to allow the workshop participants to participate in the selection process. The AG’s proposal conflicts with the statutory right/directive that the utility shall make the

selection. Not only that, it is not clear what additional value or expertise would be brought to the OBF Program to have these parties vote on the selection of the FI.

ComEd proposes to update interested stakeholders throughout the RFP process concerning, for example, the types of responses it is receiving from lenders, which would be in addition to ComEd's earlier proposal that Staff reconvene the workshop participants after the RFP process is concluded. The Commission finds this to be an adequate response to CUB/City's concerns regarding information sharing.

2. Weighting

As far as shifting the weighting in the evaluation process, the Commission finds that the affected utilities have proposed a balanced approach and we decline to adopt CUB/City's proposal. The Commission does take this opportunity to note that we have every expectation that these will be very low interest loans. Pursuant to the statutory scheme, these loans hold no risk for the FIs. For that matter, there is no risk for the Utility either because any unpaid loans will be recovered by the utilities from ratepayers through their uncollectible riders. Once the interest rate is known, the utility is directed to file that with the Commission.

C. Underwriting Criteria

Several options have been proposed for determining the credit-worthiness of potential program participants. The Commission agrees with ComEd, however, that this is a matter best left to the FI. In fact, the statute itself recognizes that the FI will be conducting credit checks or other appropriate measures to limit credit risk. The FI should utilize its expertise to determine what measures should be taken to limit credit risk.

Ensuring that only credit-worthy customers participate in the program is in the best interest of ratepayers. The FI is guaranteed to recover its investment pursuant to the statutory scheme and it ratepayers that will be left footing the bill for bad loans.

D. Reconnection

Although ComEd suggests that this is an issue that belongs to the FI, the Commission does not agree. Several provisions in the statute lead us to disagree. First, the oft cited sentence that amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial electric service. 220 ILCS 5/16-111.7(c)(5). Because the amounts due under the program are deemed amounts owed for electric service, the Commission's rules apply, specifically Part 280.

And, second, the statute recognizes that the utility retains its right to disconnect a participant that defaults on the payment of its utility bill. 220 ILCS 5/16-111.7(c)(6). This is not granting the utility a new right, but rather recognizing that because these amounts are amounts owed for electric service, the utility continues to have the right to disconnect customers that do not pay their electric bills, pursuant to Part 280. Similarly, because these amounts are amounts due for electric service, the Commission's rules for reconnection would apply.

The Commission notes that ComEd half-heartedly agrees with CUB's proposal that would require only those payments that have been missed to be paid prior to reconnection. It would appear that Section 280.110 of our rules, which governs Deferred Payment Agreements, also applies to this situation. Our reading of this section supports not only CUB's proposal but also that the utility could agree to enter into a deferred payment agreement with the participant for the missed payments. In other words, because it is in the utility's discretion as to whether it will enter into a deferred payment program, there is nothing prohibiting ComEd from adopting CUB/City's recommendation for OBF Program participants.

Ideally, reconnection of program participants should be the same across all the affected utilities with the goal being to recovery as much of the loaned amounts from the participants to avoid sending these amounts uncollectibles. Without doubt, all utilities must comply with Part 280 for both disconnections and reconnections.

E. Security Interest

The statute gives the utilities the right to retain a security interest in the financed energy efficiency measures. The fact that utilities are given this right, and not the FI, is consistent with the statutory scheme that utilities pay the FI whether or not the individual participant pays his or her utility bill. Accordingly, it is left to the utility to attempt to collect as much money from the individual participant or, if necessary, attempt to repossess the item. ComEd's proposal to work with the FI to determine when this would be financially necessary is a reasonable approach. As Staff points out, perfecting the security interest may cost more than would be recovered.

The AG's suggestion that the Utility should be barred from any costs related to filing a security interest is contrary to the statutory scheme and fails to protect ratepayers. If ComEd and the FI institution determine that it makes financial sense to perfect a security interest, this protects ratepayers because any unpaid loans and any money not recovered through repossession will be charged to ratepayers.

F. Budget Cap

The AG's request to cap Program Fees at 10% of the program dollars is denied. It is contrary to the express statutory language that the utilities are allowed to recover all of their prudently incurred costs. All costs that the utilities seek to recover from ratepayers will be subject to a prudency review in the annual reconciliation proceeding for the utility's automatic adjustment clause rider.

Any estimates that ComEd has provided are merely informational. The Commission's approval of the OBF program does not include approval of the associated proposed budget amounts.

G. Continuation of the Program During the Evaluation

CUB/City are concerned about what happens to the OBF Program during the pendency of the evaluation. Although both ComEd and CUB/City believe that the program should continue throughout, the AG believes it is premature to make such a determination. The Commission finds the AG's concerns to be unwarranted. These are revolving funds and presumably many customers will choose shorter terms that will then

free up funds that can be loaned to other customers. One topic to consider in the evaluation is whether the amount financed should exceed the \$2.5 million that all the utilities have requested. The Commission agrees with CUB/City that the evaluation process would benefit from stakeholder feedback. Thus, we adopt CUB/City's proposal for additional workshops.

XI. Taxes

In the related dockets, Nicor and Peoples Gas ask the Commission to determine whether the Public Utility Tax applies to the revenue from the OBF Program. These utilities did not explain why such a determination was necessary in this docket and no argument or further explanation was offered. The reply comments were the last scheduled filing and, there, no party was able to respond. Accordingly, the ALJ requested that parties file additional comments addressing the tax issues. Staff and ComEd filed additional comments and Staff filed a reply to ComEd. No other parties commented in this proceeding.

A. ComEd

As an initial matter, ComEd notes that its views are with respect to the applicability of taxes to its revenues as an electric utility. As explained below, ComEd's position is that no taxes are applicable to OBF program revenues. Indeed, neither ComEd, Staff, nor intervenors raised the issue of taxes in any filing in ComEd's docket, and accordingly it is ComEd's position that taxes are not at issue in this docket.

ComEd's OBF revenues will come from two sources - 1) its Rider EDA, which assesses a flat monthly charge per account - to recover program charges and 2) its Rider UF, which applies an adjusted uncollectible factor to flat and usage sensitive delivery and supply charges - to recovery any loan repayment amounts that have not been paid customers but which have, nonetheless, pursuant to statute, been paid by ComEd to the financing institution.

1. Section 2-202 Taxes

A question has been raised about the applicability of the Public Utility Fund Tax, set forth in Section 2-202 of the Act, to any OBF revenues. That tax is applied, in subsection (c), to the "gross revenues" of each public utility. However, subsection (c) also says:

For purposes of this Section, "gross revenue" shall not include revenue from the production, transmission, distribution, sale, delivery, or furnishing of electricity.

The electric OBF statute provides, however:

Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial electric service.

Thus, it is ComEd's view that its OBF revenues do not constitute "gross receipts" for the purpose of the Public Utility Fund Tax and tax does not apply.

2. State Electricity Excise Tax

The Electricity Excise Tax is a state “tax on the privilege of electric use measured by the kilowatt-hours (“kWhs”) delivered to the purchaser.” The tax is assessed at a specific rate applied to the number of kWhs delivered to the customer. Thus, OBF revenues, whether recovered through Rider EDA (a flat monthly charge) or via Rider UF as applied to flat and usage-sensitive charges, are not subject to the tax. The tax is assessed on the user of the electric service and appears as a line item on the electric bill.

3. State Electricity Distribution Tax

The state Electricity Distribution Tax is imposed on electric distribution companies, e.g., electric utilities, and is assessed as a specific rate applied to the number of kWhs distributed. OBF revenues, whether recovered through Rider EDA (a flat monthly charge) or via Rider UF as applied to flat and usage-sensitive charges, are not subject to the tax.

4. Municipal Electricity Use Tax.

Like the state Electricity Excise Tax, the Municipal Electricity Use Tax is imposed on users of electricity and is assessed at a specific rate applied to the number of kWhs used or consumed within the municipality. Again, OBF revenues, whether recovered through Rider EDA (a flat monthly charge) or via Rider UF as applied to flat and usage-sensitive charges, are not subject to the tax. The tax is assessed on the user of the electric service and appears as a line item on the electric bill.

5. Illinois Department of Revenue Opinion

Although, as explained above, it is ComEd’s position that no taxes apply to OBF revenues, in the event ComEd were to incur any costs related to obtaining a binding opinion of the Illinois Department of Revenue, such costs would be properly recoverable as program costs through Rider EDA. Section 16-111.7(f) is clear that an electric utility shall recover all of the prudently incurred costs of offering a program approved by the Commission.

B. Staff

1. Jurisdiction

Subsection (c)(5) of the Gas OBF Law provides in pertinent part that: “Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial gas service.” 220 ILCS 5/19-140(c)(5). In Staff’s view, this language triggers four different potential taxes. First, the Gas Revenue Tax Act (35 ILCS 615/et seq.) appears to be implicated because the funds financed under the OBF programs and paid on utility bills by their gas customers may be considered “gross receipts” under the Gas Revenue Tax Act. In addition, the Electricity Excise Tax Law (35 ILCS 640) is implicated but only to the extent a “self-assessing purchaser” pays tax in accordance with Sections 2-10 and 2-11 of the law, otherwise, this tax appears to be based upon kilowatt hours and not revenues. 35 ILCS 640/2-4, 2-10 and 2-11.

Also, the Public Utility Fund (“PUF”) Tax (220 ILCS 5/2-202) appears to be implicated because the funds financed under the OBF programs and paid on utility bills by public utility customers may be considered “gross revenues” under the definition of such term set forth in Section 3-121 of the Act. It is important to note that for purposes of imposing the PUF tax, Section 2-202(c) specifically exempts from “gross revenue” those revenues derived “from the production, transmission, distribution, sale, delivery, or furnishing of electricity.” 220 ILCS 5/2-202(c). Rather than paying PUF tax, electric utilities providing service to more than 12,500 customers in Illinois on January 1, 1995, contribute annually an aggregate sum, called a Public Utility Fund base maintenance contribution, which is based in part on the number of kilowatt hours delivered to retail customers for the prior year. 220 ILCS 5/2-203. Accordingly, the PUF tax is not applicable to ComEd or to the Ameren entities providing electric service.

In Staff’s view, the Commission does not have jurisdiction to determine the applicability of the Gas Revenue Act, the Electricity Excise Tax Law or the various municipal tax laws. The PUF tax, however, is, in Staff’s view, within the Commission’s jurisdiction. The PUF tax funds the operations of the Commission in administering the Act. 220 ILCS 5/2-202(a) and (b). The Commission is charged with administering and collecting the PUF funds. 220 ILCS 5/2-202(f)(1) and (2). The Commission has the power to review, audit and direct returns to be corrected. 220 ILCS 5/2-202(e). The authority to direct corrections on returns and order the payments of deficiencies (and to penalize for failure to pay deficiencies) in particular provides support for Staff’s view that the Commission has jurisdiction to determine if the funds financed under the OBF programs are subject to PUF taxes. 220 ILCS 5/2-202(f) and (g).

From Staff’s perspective, the only issue before the Commission in this proceeding in connection with the taxes assessed under the Gas Revenue Act, the Electricity Excise Tax Act, the PUF tax or municipal tax laws is whether such taxes, if assessed by the applicable tax authorities, should be considered program costs that may be passed through to ratepayers generally or if such taxes should be considered costs of implementing an eligible measure, to be taken into account in determining the cost effectiveness of the measure and paid by the participating customer. For many of the same reasons Staff cited in connection with loan origination fees, Staff argues that such taxes should be included in the costs of implementing a measure and paid by the participating customer.

In Staff’s view, the question as to whether these taxes are appropriately assessed on the funds financed under the OBF programs does not have to be addressed in the expedited dockets authorized pursuant to the Gas OBF Law or the Electric OBF Law. Under Section (b-5) of these laws, the Commission is charged with rendering a decision regarding a request for approval of a proposed OBF program and related tariffs within 120 days after receipt of the request. If no decision is rendered within the 120 day period, then the request shall be deemed to be approved. A deemed approval of a proposed OBF plan should not be construed to diminish the Commission’s authority under the PUF tax or diminish other agency’s authority under other tax laws unless the General Assembly explicitly addressed the issue in the OBF laws. Nothing in

either the Gas OBF Law or the Electric OBF Law could arguably lead to such a result by a failure of the Commission to approve the proposed plans.

Furthermore, pursuant to the Gas OBF Law and the Electric OBF Law, the proposed programs are to include the statutorily required components and be consistent with the provisions of the laws that define operational, financial and billing arrangements between and among program participants, vendors, lenders, and the utilities. (220 ILCS 5/16-111.7(c), (d) and (e)). Determining which taxes may be applicable to on-bill financing amounts, and whether the taxes are within the Commission's jurisdiction, is not required as part of the approval process. The Commission may give guidance on this issue but is not required to in order to approve the plans.

Moreover, Staff asserts that the PUF tax issue is more appropriately addressed in a docket that provides for additional time to review the issues involved. Since the plans will not be implemented immediately upon approval, there is no harm in taking additional time to consider these issues while the RFP process is ongoing. Consequently, it is Staff's recommendation that the Commission consider any tax issues within its jurisdiction in a separate docket to be convened upon approval of any of the proposed on-bill financing plans.

2. PUF Tax Applicability

In order to determine if the PUF tax applies to amounts financed under OBF programs, Staff needs to interpret the PUF Act, the Gas OBF Law and the Electric OBF Law. The interpretation or construction of statutes is a question of law, to be decided by the court or tribunal. See, e.g., Matsuda v. Cook County Employees and Officers Annuity and Benefit Fund, 178 Ill. 2d 360, 364; 687 N.E. 2d 866 (1997); Bruso v. Alexian Brothers Hospital, 178 Ill. 2d 445, 452; 687 N.E. 2d 1014 (1997); Branson v. Dept. of Revenue, 168 Ill. 2d 247, 254; 659 N.E. 2d 961 (1995). The primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. Bruso, 178 Ill. 2d at 451. Legislative intent should be sought primarily from the language of the statute, People v. Beam, 55 Ill. App. 3d 943, 946; 370 N.E. 2d 857 (5th Dist. 1977), because the language of the statute is the best evidence of legislative intent, Bruso at 451, and provides the best means of deciphering it. Matsuda, 178 Ill. 2d at 365. Statutes must be construed as a whole, and the court or tribunal must consider each part or section in connection with the remainder of the statute. Bruso at 451-52. If the legislature's intent can be determined from the plain language of the statute, that intent must be given effect, without further resort to other aids to statutory construction. Bruso at 452. Thus, the threshold task for a court or tribunal in construing a statute is to examine the terms of the statute. Toys "R" Us v. Adelman, 215 Ill. App. 3d 561, 568; 574 N.E. 2d 1328 (3rd Dist. 1991).

In addition, it is clear that a court must construe a statute as it is, and may not supply omissions, remedy defects, or add exceptions and limitations to the statute's application, regardless of its opinion regarding the desirability of the results of the statute's operation. Adelman, 215 Ill. App. 3d at 568; cf. Thornton v. Mono Mfg. Co., 99 Ill. App. 3d 722, 425 N.E. 2d 522 (2nd Dist. 1981) (in determining that application of statute of limitations barring minor's products liability claim was proper, if perhaps harsh, the court observed that, where a statute is clear, the only legitimate role of court is to

enforce the statute as enacted by legislature); People ex rel. Racing Bd. v. Blackhawk Racing, 78 Ill. App. 3d 260, 397 N.E. 2d 134 (1st Dist. 1979) (court observed that, though the General Assembly could have enacted a statute more effective in accomplishing its purpose than the one it did enact, the court was not permitted to rewrite the statute to remedy this defect).

But for the language in subsection (c)(5) of the Electric OBF Law and the Gas OBF Law, which deems the funds financed under the OBF programs to be amounts owed for electric or gas service, the PUF tax would not ordinarily apply to these funds. The utilities act as a conduit under these programs and do not obtain any revenues that Staff can ascertain in connection with this role. Nevertheless, the last sentence of Section (c)(5) is clear and unambiguous. It states: “Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial [electric/gas] service.” As stated above, the best evidence of the legislature’s intent is the language of the statute. Bruso at 451.

This sentence in Section (c)(5) does not limit its reach to the Gas OBF Law or Electric OBF Law. Nor does it identify the purpose for considering OBF funds due under the program “amounts owed” for gas or electric service. Parties may speculate as to the intent of the General Assembly in adding this language; for instance, that it was added for the purpose of making it easier for the utilities to require the loan to be paid in full when there is a transfer of title to the premises or to terminate service for non-payment. But the sentence is devoid of any qualifications or explanations that limit the interpretation of this language to these purposes or to any others so this remains speculation in light of the plain meaning of the language, which is clear on its face and is broad enough to cover tax issues. Further, even if the language were ambiguous, the legislative history provides no guidance on this issue. Under rules of statutory construction, the General Assembly is assumed to know existing law and legislation that might be impacted by its statutory language. State v. Mikusch, 562 N.E.2d 168 (Ill. 1990).

The PUF tax is imposed on the gross revenues of public utilities that are subject to the PUF Act. As stated above, revenues from electricity are excluded. 220 ILCS 5/2-202. Section 3-121 of the Act defines “gross revenue” in the following terms:

As used in Section 2-202 of this Act, the term “gross revenue” includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9-102 of this Act and (b) pursuant to emergency rates as permitted by Section 9-104 of this Act, and (2) is derived from the intrastate public utility business of such a utility.

In addition, Section 3-121 provides certain additional exclusions, including exclusions for revenue derived from sales for resale and certain charges added to customers’ bills pursuant to identified Sections of the Act.

Because Section (c)(5) of the Gas OBF Law and the Electric OBF Law deems amounts due under the OBF programs to be amounts owed for residential and, as appropriate, small commercial electric and gas service, it follows that these amounts

would be deemed revenues. Under Section 3-121 of the Act, “gross revenues” for purposes of assessing the PUF tax, must fit into certain criteria, namely, 1) it must be collected pursuant to tariffs the company is required to file under section 9-102 (or as emergency rates), and 2) it must be derived from the company’s intrastate public utility business. The Gas OBF Law and the Electric OBF Law each contemplate tariffing of the programs and the utility plans include tariffs of the OBF programs, therefore, the first criterion of the definition of “gross revenues” under the PUF Act appears to have been met. Further, by deeming the financed amounts under the OBF programs to be amounts owed for electric and gas service, the Gas OBF Law and the Electric OBF Law would appear to require that these amounts be considered derived from the company’s intrastate public utility business. The operative term (“intrastate public utility business”) in the second criterion of the definition of “gross revenues”, is defined in Section 3-120 of the Act. That provision states:

As used in Section 3-121 of this Act, the term “intrastate public utility business” includes all that portion of the business of the public utilities designated in Section 3-105 of this Act and over which this Commission has jurisdiction under the provisions of this Act.

Given the broad language of the preceding definition, coupled with the statutory characterization of these amounts as amounts owed for gas and/or electric service, the funds financed under the OBF program appear to constitute business revenue over which the Commission has jurisdiction under the provisions of the Act. In addition, Section 3-121 contains examples of exemptions for certain charges appearing on bills that the General Assembly excluded from the definition of “gross revenues.” For example, Section 3-121 provides: “Gross revenue” shall not include any charges added to customers” bills pursuant to the provisions of Section 9-221, 9-221.1 and 9-222 of this Act....” 220 ILCS 5/3-121. If the General Assembly intended to exempt these funds due under the OBF programs from PUF taxes, it had only to add another exemption or alternatively, to forgo characterizing these amounts as amounts owed for gas or electricity service.

Staff anticipates that arguments against this interpretation will be made. The most important of which will likely be that these OBF amounts do not appear to be actual revenues that ought to be taxed. Reasonable enough, but the Legislature in Section (c)(5) of the Gas OBF Law and the Electric On OBF Law appear to have deemed them to be just that. In light of the language of the laws, it is difficult to argue anything else other than the law ought to have been written differently.

To the extent these potential counter arguments are persuasive, in Staff’s view, a legislative change ought to be considered. While the PUF tax amounts applicable to the OBF programs may be relatively insignificant, they will be passed through to the participants of the OBF programs, and if they default, to ratepayers at large. In addition, Staff has not considered fully the possible application of the arguments of IDOR in connection with Gas Revenue Act to these PUF tax arguments nor has IDOR considered the application of the Gas OBF Law and the Electric OBF Law to the PUF Act. Preliminarily, Staff would note that the PUF tax does distinguish between electric utilities and other public utilities and treats such entities quite differently, presumably

because of the restructuring of the electric industry. Therefore, it is not clear to Staff whether the General Assembly would be concerned about the continued differentiation created by the OBF programs, particularly in light of the fact that the PUF tax on amounts due under the OBF programs will not be significant.

Staff recognizes that there are costs in collecting and then refunding a tax that did not need to be paid. These costs need to be taken into consideration by the utilities in making their decisions. At the end of the day, all program costs will be evaluated based upon their reasonableness and prudence. In Staff's view, that prudence determination is not to be made in this proceeding but only when the utility seeks recovery under the automatic adjustment clause tariff and the Commission has before it actual expenditures. 220 ILCS 5/16-111.7(f) and 220 ILCS 5/19-140(f). Consequently, Staff does not agree with NS/PGL's request that the Commission find in this proceeding that costs incurred to receive a binding determination of the applicability of the Gas Revenue Tax Act and municipal utility tax are recoverable Program costs.

3. Reply to ComEd

Staff agrees with ComEd's assessment that electricity revenues are excluded from the definition of "gross revenue" for purposes of applying PUF taxes. In its Additional Initial Comments, ComEd identifies and discusses the State Electricity Excise Tax, the State Electricity Distribution Tax and the Municipal Electricity Use Tax but argues that since these taxes are imposed based upon kilowatt-hours rather than revenues, the OBF program amounts are not subject to these taxes. Because none of these laws are within the Commission's jurisdiction, Staff will not comment other than to say these taxes do appear, in general, to be based upon kilowatt hours rather than revenues and the Electricity OBF Law would not appear to create additional taxes under such laws. ComEd also speculates that if it were to incur any costs related to obtaining a binding opinion of IDOR, "such costs would be properly recoverable." Staff contends that the recoverability of these costs is premature and not properly before the Commission in this Docket or the companion dockets.

C. Commission Analysis and Conclusion

At the outset, we note that this is an expedited proceeding to review the statutorily mandated OBF Program proposed by the utility. No determination of taxes is necessary under the relevant statute, but in the interest of administrative efficiency, we consider the issues raised.

We agree with Staff, and the various parties that filed comments on the tax issue, that the only tax over which the Commission has the jurisdiction to determine applicability, is the Public Utility Fund Tax, pursuant to Section 5/2-202 of the Act. To the extent a utility pursues a decision from another taxing authority on the applicability of another tax, the utility may petition for recovery of any prudently incurred expenses related to that pursuit through the utility's automatic adjustment clause tariff reconciliation.

Despite the ALJ's ruling requesting further comments on the tax issue, the arguments of the parties are not thoroughly vetted, i.e., ComEd does not respond to Staff's arguments regarding the applicability of taxes to the amounts financed under the

OBF Program and Nicor states that it “takes no position on how the Commission should decide whether the PUF tax is applicable.” Nicor Reply to Additional Comments at 2. On the arguments actually made, however, we are not persuaded or convinced that the PUF tax is applicable. We turn now to the relevant statutory authority.

The Commission derives its authority for imposing the PUF tax from Section 5/2-202, which states in relevant part that:

A tax is imposed upon each public utility subject to the provisions of this Act equal to .08% of its gross revenue . . . For purposes of this Section, “gross revenue” shall not include revenue from the production, transmission, distribution, sale delivery, or furnishing of electricity.

220 ILCS 5/2-202(c). Gross revenue is defined in Section 5/3-121, which states:

As used in Section 2-202 of this Act, the term “gross revenue” includes all revenue which (1) is collected by a public utility subject to regulations under this Act (a) pursuant to the rates, other charges, and classifications which it is required to file under Section 9-102 of this Act and (b) pursuant to emergency rates as permitted by Section 9-104 of this Act, and (2) is derived from the intrastate public utility business of such a utility.

220 ILCS 5/3-121. Public utility business is defined in Section 5/3-105, which states:

- (1) the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communications purposes;
- (2) the disposal of sewerage; or
- (3) the conveyance of oil or gas by pipe line

220 ILCS 5/3-105 (a). In order for the PUF tax to apply to the amounts financed under the OBF or the Program Fees recovered, the two part definition of gross revenue would have to be satisfied.

First, the revenue at issue would have to be revenue collected pursuant to rates filed under Section 9-102 or 9-104. The OBF revenues are collected pursuant to either Section 5/19-140 or Section 5/16-111.7. For that reason alone, the OBF revenues are not subject to PUF. Further, in examining the definition of “gross revenues” under Section 3-121, we observe that it plainly speaks to “revenue which is collected . . . pursuant to the rates, other charges and classifications which it required to file under Section 9-102.” 220 ILCS 5/3-121. This phrase, without either being enlarged or diminished, clearly refers to regulated rates and other forms of monetary consideration demanded in exchange for the provision of service. Nothing more is included in Section 3-121, and certainly it does not define “gross revenues” to include all revenues obtained from non-rate-related aspects over which the Commission may have jurisdiction. We have no authority to re-write a statute. It is the rule that a taxing statute is to be strictly construed and its language not extended nor enlarged beyond its clear import. Texaco-Cities Service Pipeline Company v. Sam McGaw, 182 Ill.2d 262, 275, 695 N.E.2d 481, 487 (1998).

To be entirely sure, however, our analysis requires consideration of the second part of the definition, which requires that the revenue be derived from the intrastate public utility business as defined in Section 3-105. We fail to see any connection between any part of the definition of public utility business with the statutory scheme laid out in the OBF laws wherein the utility acts as a conduit for the collection of money financed by an individual to purchase refrigerators, furnaces, etc.

Also, contrary to Staff's suggestion, there is no basis to expand the PUF tax law by construing language in the OBF law. We note that Staff relies on the sentence in the OBF laws which states that the amounts due under the program shall be deemed amounts owed for gas or electric service. When taken in context, as required by the rules of statutory construction, this sentence does not have anything to do with taxes. The entire paragraph from which it is taken states that:

A loan issued to a participant pursuant to the program shall be the sole responsibility of the participant, and any dispute that may arise concerning the loan's terms, conditions, or charges shall be resolved between the participant and lender. Upon transfer of the property title for the premises at which the participant receives electric service from the utility or the participant's request to terminate service at such premises, the participant shall pay in full its electric utility bill, including all amounts due under the program, provided that this obligation may be modified as provided in subsection (g) of this Section. Amounts due under the program shall be deemed amounts owed for residential and, as appropriate, small commercial electric service.

220 ILCS 5/19-140(c)(5). Simply stated, the language in this paragraph speaks to the customer's obligation. It explains, in relevant part, that if a customer were to move from the premises he or she must pay the utility bill in full and that bill includes "all amounts due" under the program. The characterization of these amounts due as "amounts owed" for utility service was clearly meant for purposes having no relationship to taxes. Indeed, the next following paragraph makes this clear where the General Assembly wrote that the utility retains its right to disconnect a participant that defaults on the payment of its utility bill. 220 ILCS 5/19-140(c)(6). At bottom, there is no express provision on taxes to be found in these paragraphs or in the whole of the statute. Thus, Staff's reliance on an isolated sentence and taken out of context provides no logical basis upon which to impose the PUF tax.

To the extent that Staff believes that there is a further basis upon which to explore the applicability of the PUF tax, it can propose the initiation of a new and separate proceeding.

Staff maintains that the only issue to be decided in this docket, or the related dockets, is that if any taxes were to apply, whether these taxes should be imposed on the individual participant or collected from all ratepayers. In reality, any energy efficiency measure that is purchased by a consumer will presumably be subject to a sales tax. It makes no sense that further taxes should be applied to that purchase. In the event that some other tax is applied, however, it is appropriate that these taxes be recovered from all ratepayers. It would be a great disincentive to a potential participant

in this program if they were told that they would be required to pay additional taxes because they chose to finance through their utility bill instead of just outright purchasing the item. This would diminish the purposes, intents, and goals of the OBF statutes.

XII. Findings and Ordering Paragraphs

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company is a corporation organized and existing under the laws of the State of Illinois with its principal office in Chicago, Illinois. Commonwealth Edison Company is engaged in delivering electricity to the public in the northern portion of the State of Illinois, and it is a public utility within the meaning of Section 3-105 of the Act;
- (2) the Commission has jurisdiction over the parties and the subject matter herein;
- (3) the findings of fact and conclusions of law set forth in the prefatory portions of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;
- (4) the On Bill Financing Program proposed by Commonwealth Edison Company and modified herein should be approved;
- (5) the tariff changes proposed by Commonwealth Edison Company to Rider GT&C, Rider EDA and Rider UF should be approved;
- (6) Staff should reconvene the workshops after the completion of the FI RFP process;
- (7) Commonwealth Edison Company should file sample loan documents, the interest rate and the list of eligible measures prior to the initiation of the Program;
- (8) Commonwealth Edison Company should provide to Staff, for review and approval, the proposed consumer information that will be made available to potential participants;
- (9) the Independent Evaluator should convene workshops to receive feedback from all interested stakeholders;
- (10) any motions, objections or petitions in this proceeding that have not specifically been ruled on should be disposed of in a manner consistent with the findings and conclusions herein.

IT IS THEREFORE ORDERED that the On Bill Financing Program proposed by Commonwealth Edison Company, as modified herein, is approved.

IT IS FURTHER ORDERED that the proposed tariff changes to Rider GT&C, Rider EDA and Rider UF, as proposed by Commonwealth Edison Company, are approved.

IT IS FURTHER ORDERED that Staff of the Commission is directed to reconvene the workshops following completion of the FI RFP process.

IT IS FURTHER ORDERED that following completion of the RFP process, Commonwealth Edison Company is directed to file the agreed to sample loan documents, the interest rate and its list of eligible measures prior to initiation of the OBF Program.

IT IS FURTHER ORDERED that prior to initiation of the OBF Program, Commonwealth Edison Company is directed to provide to Staff, for review and approval, the proposed consumer information that will be made available to potential participants.

IT IS FURTHER ORDERED that workshops should be convened by the Independent Evaluator during the evaluation process in order to receive feedback from all interested stakeholders.

IT IS FURTHER ORDERED that any motions, objections or petitions in this proceeding that have not been specifically ruled on are disposed of in a manner consistent with the findings and conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:
BRIEFS ON EXCEPTIONS DUE:
REPLY BRIEFS ON EXCEPTIONS DUE:

April 16, 2010
April 28, 2010
May 3, 2010

Leslie Haynes,
Administrative Law Judge